AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3-27-90
Vol. 55 No. 59

federal register

Tuesday
March 27, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

3-27-90
Vol. 55 No. 59
Pages 11133-11356

federal register

Tuesday
March 27, 1990

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WHO: The Office of the Federal Register.

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WHEN: April 16, at 9:00 a.m.
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1940 and 1980

Community Programs Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: Farmers Home Administration (FmHA) was authorized to guarantee loans for community facilities by P.L. 101–161, enacted November 21, 1989. This interim rule defines this new loan guarantee program and establishes the procedures for members of the public and lending institutions to use in applying for loan guarantees and for FmHA to follow in administering the program. The intended effect is to provide regulations which implement the intent of Congress as reflected in the Appropriation Act of 1989.

DATES: Interim rule effective March 27, 1990. Written comments must be submitted on or before April 26, 1990.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. The Interim Regulatory Impact Analysis Statement (IRIA) and all written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: James C. Alsop, Chief, Program Development Branch, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6312, South Agriculture Building, Washington, DC 20250, telephone: (202) 382–1490.

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 major, because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

The General Counsel has reviewed the regulations which the Farmers Home Administration (FmHA) is publishing as an interim final rule and has found that these regulations comply with applicable statutes and that FmHA has the authority to propose such regulations pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Dated: January 9, 1990.

Alan C. Raul,

General Counsel.

Summary of IRIA

This action establishes regulations to implement a guaranteed community loan program. Providing for a loan guarantee program presents an opportunity to involve the private sector in making loans for community projects and to reduce the Government's role as a source of credit. The Interim Regulatory Impact Analysis provides an estimate of the economic impact of shifting from a direct to a guaranteed loan program. The analysis discusses whether the additional cost associated with a loan guarantee program will impair the financial feasibility of some of the projects otherwise financed solely by FmHA. The IRIA concludes that:

1. A shift from direct to guaranteed loans reduces FmHA exposure and Government outlays immediately, due to a decrease in the amount of loan funds disbursed;

2. The additional interest cost associated with a guaranteed loan program will not have a significant effect on the entities that qualify for the program; and

3. Providing a loan guarantee permits the continuation of assistance to entities needing only minimal assistance in attracting private financing while providing more direct loan assistance to entities serving lower income population.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under Numbers 10.423, Community Facilities Loans, and 10.418 Water and Waste Disposal Systems Loans, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instructions 1901–H and 1940–J.

Environmental Impact

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

This interim rule adapts the regulations now in effect to govern the Agency's Business and Industry guaranteed loan program for use in this similar program, newly funded by Public Law 101–161, to provide for guaranteed Community Facility program loans. FmHA is implementing this interim rule immediately upon publication, with a 30-day comment period.

The rule describes procedure and practice for applying for and obtaining loan guarantees, and the Administrative Procedure Act, therefore, does not require notice and comment prior to the rule becoming effective. Requiring prior notice and comment would also result in substantial delays in making the guarantee program available to the public. Since these rules are simply being adapted to this program from rules already in effect for the business and industry guarantee program, public controversy over them is unlikely. For these reasons the Agency also finds that prior notice and comments are "unnecessary" and "contrary to the public interest" as those terms are used in the Administrative Procedure Act, and that good cause exists for making

these rules effective on less than 30 days after publication.

The Agency, however, is also providing for public comment so that, in the event that members of the public do wish to suggest alternative rule provisions or courses of action in implementing this program, they will have an opportunity to give FmHA the benefit of their views in the near future. In the event that public comments are received, FmHA will consider them, and issue such amendments to these rules as may be appropriate, as quickly as it can.

List of Subjects in 7 CFR Parts 1940 and 1980

Administrative practice and procedure, loan programs—Housing and community development, Loan programs—Agriculture and Loan programs—Business and Industry—Rural development assistance.

Therefore, 7 CFR chapter XVIII, is amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 16 U.S.C. 3844; 7 CFR 2.23; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds.

2. Section 1940.591 is added to read as follows:

§ 1940.591 Community Program Guaranteed loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source, and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.

(2) State's percentage of National rural population with incomes below the poverty level—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

$$SF = (\text{criterion No. } 1 \times 50 \text{ percent}) + (\text{criterion No. } 2 \times 50 \text{ percent})$$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* The transition formula for Community Program Guaranteed loans is not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See 1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.522(g) of this subpart. States may request funds by forwarding a request following the format found in Guide 26 of subpart A of part 1942 of this chapter (available in any FmHA office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds from the State's allocation to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.522(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

PART 1980—GENERAL

3. The authority citation for part 1980 continues to read as follows:

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

Subpart A—General

§ 1980.6 [Amended]

4. Section 1980.6(b) is amended by inserting between the items "*B&I*" and "*DARBE*" the words "*CP*—Community Programs."

§ 1980.60 [Amended]

5. In § 1980.60, paragraph (a)(12) is amended by inserting the following language at the end of the first sentence: "or Form FmHA 1980–10, 'Application for Loan and Guarantee' (Community Programs)."

6. Appendix B to subpart A is revised to read as follows:

Appendix B to Subpart A—Lender's Agreement

USDA-FmHA *Position 5*
Form FmHA 449–35
(Rev. 12–89)
FORM APPROVED
OMB No. 0575–0024
Type of Loan: _____
FmHA Loan Ident. No. _____
Applicable 7 CFR
Part 1980 Subpart _____
_____(Lender) of
_____has made a loan(s) to
_____(Borrower)
_____in the principal
amount of $ _____
as evidenced by _____
note(s) (include Bond as appropriate)
described as follows: _____
_____
_____
_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449–34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed_____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting

in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0024), Washington, D.C. 20503.

III. *Lender's Sale or Assignment of Guarantee Loan.*

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449–36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall suceed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449–34, "Loan Note Guarantee," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees for B&I, FP only) will remain with the Lender and in all cases insure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing.* Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449–34, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. *Participations.*

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Community Programs and Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable subpart of title 7 CFR part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable subpart of title 7 CFR part 1980 and in accordance with the terms of Form FmHA 449–14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution will direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. The Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies that it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured part of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. *Lender's servicing responsibilities include, but are not limited to:*

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for Farm Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. *Assuring that adequate insurance is maintained.* This includes hazard insurance

obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party and Fidelity Bond coverage for Community Program Loans if required.

5. *Assuring that:* taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report." For Farm Ownership, Soil and Water, and Operating loans, Form FmHA 1980–41 will only be submitted annually as of December 31.

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. If a Farm Ownership, Soil and Water or Operating loan is involved the Lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR Part 1980, Subpart B, § 1980.126.

X. *Default.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA's Lender's, and the Holder'(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

9. Principal and interest write down in accordance with 7 CFR Part 1980, Subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's

obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of the FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. *Liquidation.* If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I or CP loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I or CP loan balances in excess of $200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interest necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the accelertion notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43. "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payments will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA regulations.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the esimtated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of

any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA, except for Farm Ownership, Soil and Water, and Operating loans only, when the Lender files an estimated loss claim. For Farm Ownership, Soil and Water and Operating loans, only, when the Lender files an estimated loss claim, the Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. *Protective Advances.*

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include but are not limited to advances made for taxes annual assessments, ground rent hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. *Additional Loans or Advances.*

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. *Future Recovery.*

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. *Transfer and Assumption Cases.*

Refer to the applicable subpart of title 7 of CFR part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, will be entered on Form FmHA 449–30, line 13 and 14.

XVI. *Bankruptcy.*

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 9, 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a Chapter 7 bankruptcy or liquidation plan in a Chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the rorganization plan, the Lender will complete Form FmHA 1980 44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

B. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments.

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.

5. Overpayments. Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by

FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XVII. *Debt Write-down*

For Farm Ownership, Soil and Water, and Operating loans only, refer to title 7 of CFR part 1980, subpart B, § 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The Lender will use Form FmHA 449–30. "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive is pro-rata share of any loss sustained.

XVIII. *Other Requirements.*

This agreement is subject to all the requirements of the applicable subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XIX. *Execution of Agreements.*

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to the execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XX. *Notices.*

All notices and actions will be initiated through FmHA for _____ (State) with mailing address at the date of this instrument _____

XXI: The Lender will ensure that the borrower complies with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

Dated this _____ day of _____. 19____

LENDER:

ATTEST: _____ (SEAL)
By _____
Title _____
UNITED STATES OF AMERICA
Farmers Home Administration
By _____
Title _____

Subpart E—Business and Industry Loans

7. Appendix F to subpart E is revised to read as follows:

Appendix F to Subpart E—Conditional Commitment for Guarantee

USDA-FmHA

Form FmHA 449–14
(Rev. 12–89)
FORM APPROVED
OMB NO. 0575–0024
TO: Lender _____
Case No. _____
Lender's Address _____
State _____
Borrower _____
County _____
Type of Loan _____
Principal Amount of Loan _____
$ _____

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form(s) FmHA 449–34, "Loan Note Guarantee," subject to the conditions and requirements specified in said regulations and below.

The Loan Note Guarantee fee payable by the Lender to FmHA will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is [1] _____% and, if applicable, the loan subsidy rate is _____% [1]. If a variable rate is used, it must be tied to a base rate which cannot change more often than _____ [2] and must be published periodically in a financial publication specifically agreed to by the Lender and Borrower.

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.60 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are set out on the Request for Loan Note Guarantee, the Request for Guarantee Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan, or the Application for Loan and Guarantee. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on the forms will be considered. Additional Conditions and Requirements including Source and Use of Funds:[3]

This conditional commitment will expire on _____ [4] unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA

BY: _____
Date: _____
FmHA *(Title)* _____

Acceptance of Conditions

To: Farmers Home Administration (FmHA)[5]
The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within _____ days.

_____
(Name of Lender)
By: _____
(Signature of Lender)
[6] _____
(Signature for Borrower)

[1] Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan subsidy rate, if applicable.

[2] Insert the period prescribed in the applicable FmHA regulation. For B&I loans "quarterly" and for CP loans "annually" will be inserted in this space.

[3] Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert "NONE".

[4] FmHA will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

[5] Return completed and signed copy of this form to FmHA issuing office.

[6] Required in B&I, CP, and RH–MF cases, not in other cases.

[1] Footnotes appear at the end of Form.

8. Subpart I of part 1980, consisting of § 1980.801 through 1980.900, is added to read as follows:

PART 1980—GENERAL

Subpart I—Community Programs Guaranteed loans

Sec.
1980.801 Introduction.
1980.802 Definitions.
1980.803–1980.804 [Reserved]
1980.805 Rural area determinations.
1980.806 Availability of credit from other sources.
1980.807–1980.810 [Reserved]
1980.811 Legal authority and responsibility.
1980.812 Priorities.
1980.813 Eligible loan purposes.
1980.814 Ineligible loan purposes.

Sec.
1980.815 Transactions which will not be guaranteed.
1980.816 Facilities for public use.
1980.817 Fees and charges by lender.
1980.818 Eligible lenders.
1980.819 Loan guarantee limits.
1980.820–1980.822 [Reserved]
1980.823 Interest rates.
1980.824 Terms of loan repayment.
1980.825–1980.831 [Reserved]
1980.832 Environmental requirements.
1980.833 Flood or mudslide hazard area precautions.
1980.834 Equal opportunity and nondisrimination requirements.
1980.835–1980.841 [Reserved]
1980.842 Feasibility studies.
1980.843 Security.
1980.844 Appraisal reports.
1980.845–1980.850 [Reserved]
1980.851 Processing applications.
1980.852 FmHA evaluation of application.
1980.853 Loan approval and obligating funds.
1980.854 Projects requiring National Office review.
1980.855 Review of requirements.
1980.856 Conditions precedent to issuance of the Loan Note Guarantee (Form FmHA 449–34).
1980.857 Issuance of lender's agreement, loan note guarantee, contract of guarantee, and assignment guarantee agreement.
1980.858–1980.868 [Reserved]
1980.869 Design and construction.
1980.870 Loan servicing.
1980.871 Defaults by borrower.
1980.872 Liquidation.
1980.873 Protective advances.
1980.874 Additional loans or advances.
1980.875 Bankruptcy.
1980.876 Transfer and assumptions.
1980.877 Mergers.
1980.878 Disposition of acquired property.
1980.879 State Director's additional authorizations and guidance.
1980.880 Appeals.
1980.881–1980.899 [Reserved]
1980.900 OMB control number.

Subpart I—Community Programs Guaranteed Loans

§ 1980.801 Introduction.

(a) This subpart, supplemented by subpart A of this part, contains the regulations for Community Programs (CP) loans guaranteed by the Farmers Home Administration (FmHA), and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) The purpose of the CP Guaranteed Loan Programs is to improve, develop, or finance water or waste disposal and other essential community facilities in rural areas. This purpose is achieved through bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits. It is NOT intended that the guarantee authority be used for marginal or substandard loans or to "bail out" lenders having such loans.

(c) The CP loan program is administered by the Administrator through a State Director serving each State. The District Director is the focal point for the program and the local contact person for processing and servicing activities, although this subpart refers in various places to the duties and responsibilities of other FmHA employees.

§ 1980.802 Definitions.

The following general definitions are applicable to the terms used in this subpart. Additional definitions may be found in § 1980.6 of subpart A of this part.

Borrower. A borrower may be a cooperative, corporation, or other legal entity organized and operated on a nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized Indian tribal group; a municipality, county, or other political subdivision of a State. Groups organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or a supplemental agreement provision as may be required as a condition of loan approval.

Collateral. Security pledged for the guaranteed loan.

Community facilities. For the purposes of this subpart, community facilities are those facilities designed to provide, enlarge, extend, or otherwise improve water or waste disposal and other essential community facilities providing essential service primarily to rural residents.

Lender. The person or organization making and servicing the loan which is guaranteed under the provisions of this subpart. The lender is also referred to in this subpart as the applicant, who is requesting a guarantee during the preapplication and application stage of processing.

Lender's exposure. The lender's exposure before and after the loan, and any applicable limits on the lender's lending authority.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

Protective advances. Protective advances will not be made in lieu of additional loans. Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not or cannot meet its obligations to protect or preserve collateral. Ordinarily, protective advances are made when liquidation is contemplated or in process. A protective advance must be an indebtedness of the borrower.

Public body. A municipality, county or other political subdivision of a state, an Indian Tribe on a Federal or State reservation, or another Federally recognized Indian Tribe.

Service area. The service area is that area reasonably expected to be served by the facility being financed by the guaranteed loan.

State. Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§§ 1980.803–1980.804 [Reserved]

§ 1980.805 Rural area determinations.

Facilities financed through FmHA guarantee must primarily serve rural residents. For water or waste disposal facilities, the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States. For essential community facilities, the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 20,000 inhabitants according to the latest decennial census of the United States. Facilities must be located in rural areas except for utility-type services, such as water, sewer, natural gas, or hydroelectric serving both rural and nonrural areas. In such cases, funds guaranteed by FmHA may be used to finance only that portion serving rural users, regardless of facility location. Loans for water or waste disposal facilities will not be made to any city or town with a population in excess of 10,000. Loans for essential community facilities will not be made to any city or town with a population in excess of 20,000.

§ 1980.806 Availability of credit from other sources.

To be eligible for a guaranteed loan under this subpart, the borrower must be unable to obtain the required credit without the CP loan guarantee from private or cooperative sources at reasonable rates and terms for loans for similar purposes and period of time. The borrower must certify in writing and

FmHA shall determine that the credit is not available from commercial sources at reasonable rates and terms without the CP loan guarantee. The lender also must certify that it would not make the loan without the guarantee. These certifications shall become a part of the FmHA case file.

§§ 1980.807—1980.810 [Reserved]

§ 1980.811 Legal authority and responsibility.

Each borrower must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The borrower shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the borrower even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice to provide such service in the state. Management agreements should provide for at least those items listed in Guide 24 of FmHA Instruction 1942–A (available in any FmHA office.) Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

§ 1980.812 Priorities.

Section 1942.17(c) of subpart A of part 1942 of this chapter shall apply to loan to be guaranteed under this subpart.

§ 1980.813 Eligible loan purposes.

(a) Funds may be used to construct, enlarge, extend, or otherwise improve water or waste disposal, and other essential community facilities providing essential service primarily to rural residents.

(1) Water or waste disposal facilities include water, sanitary sewerage, solid waste disposal, and storm wastewater facilities.

(2) Essential community facilities are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including but not limited to:

(i) Fire, rescue, and public safety;

(ii) Health services;

(iii) Community, social, or cultural services;

(iv) Transportation facilities such as streets, roads, and bridges;

(v) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for Rural Electrification Administration (REA) financing;

(vi) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for REA financing; and

(vii) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(3) Otherwise improve includes but is not limited to the following:

(i) The purchase of major equipment, such as solid waste collection trucks and X-ray machines, which will in themselves provide an essential service to rural residents;

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service; and

(iii) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

(b) Funds also may be used:

(1) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) (1) and (2) of this section.

(2) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(3) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (a), (b)(1), and (b)(2) of this section.

(i) Reasonable fees and costs such as origination fee, legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys and possible salvage or other mitigation measures, planning, and establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the FmHA National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the FmHA National Office; and interest on interim financing.

(iii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts are incurred for the facility or service being financed or any part thereof;

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(4) To pay obligations for construction incurred before issuance of the conditional commitment. Construction work should not be started and obligations for such work or materials should not be incurred before the conditional commitment is issued. However, if there are compelling reasons for proceeding with construction before the conditional commitment is issued, applicants may request FmHA approval to pay such obligations. Such requests may be approved if FmHA determines that:

(i) Compelling reasons exist for incurring obligations before issuance of conditional commitment; and

(ii) The obligations will be incurred for authorized loan purposes; and

(iii) Contract documents have been approved by the lender; and

(iv) All environmental requirements applicable to the applicant and the borrower have been met; and

(v) The borrower has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanics, material, or other liens that may attach to the security property. FmHA may authorize payment of such obligations at the time of loan closing. FmHA's authorization to pay such obligations is on the condition that it is not committed to make the loan guarantee. FmHA assumes no responsibility for any obligations incurred by the borrower; and the borrower must subsequently meet all loan guarantee approval requirements. The lender's request and FmHA authorization for paying such obligations shall be in writing. If

construction is started without FmHA approval, post approval in accordance with this section may be considered.

§ 1980.814 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) On-site utility systems or business and industrial buildings in connection with industrial parks.

(b) Facilities to be used primarily for recreation purposes.

(c) Community antenna television services or facilities.

(d) Electric generation or transmission facilities or telephone systems, except as extensions to serve a particular essential community facility as provided in § 1980.813(b)(1) or (b)(2) of this subpart.

(e) Facilities which are not modest in size, design, and cost.

(f) Finder's and packager's fees.

(g) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in Section 6 of the Coastal Barriers Resource Act, P.L. 97–348 (available in any FmHA office).

(h) New combined sanitary and storm water sewer facilities.

§ 1980.815 Transactions which will not be guaranteed.

(a) Loans made by any Federal agencies or State agencies.

(b) Loans involved in tax-exempt obligations according to § 1980.23 of subpart A of this part.

(c) Loans for a water or waste disposal facility involving an FmHA grant.

§ 1980.816 Facilities for public use.

The parameters for "facilities for public use," as defined at § 1942.17(e) of Subpart A of Part 1942 of this chapter, are applicable as well for this subpart. In addition:

(a) The term "Applicant/Borrower," as used in § 1942.17(e), shall mean the lender and the borrower for purposes of this subpart.

(b) The term "FmHA Fundings," as used in § 1942.17(e), shall mean FmHA guarantee for purposes of this subpart.

§ 1980.817 Fees and charges by lender.

(a) Allowable fees and charges by the lender are shown under § 1980.22 of Subpart A of this part.

(b) Guarantee fees are as shown under § 1980.21 of Subpart A of this Part.

§ 1980.818 Eligible lenders.

(a) Eligible lenders as defined in this section may participate in the FmHA CP loan guarantee program. These lenders must be subject to credit examination and supervision by either an agency of the United States or a state. Only those lenders listed in this section are eligible to make and service guaranteed loans, and such lenders must be in good standing with their licensing authority and have met licensing, loan making loan servicing, and other requirements of the state in which the collateral will be located, and the loan making and/or loan servicing office requirements of § 1980.13 of Subpart A of this Part. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders include:

(1) Any Federal or State chartered:

(i) Bank, or

(ii) Savings and loan association.

(2) Any mortgage company that is a part of a bank holding company,

(3) Farm Credit Bank of the Federal Land Bank Association authorized to make loans to the type guaranteed by this subpart,

(4) An insurance company regulated by the National Association of Insurance Commissioners, and

(5) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development type projects. These lenders must also be subject to credit examination and supervision by either an agency of the United States or a state, and other requirements as set forth in paragraph (a) of this section. These types of lenders must be approved by the FmHA Administrator prior to the issuance of the loan guarantee.

(b) With written concurrence of FmHA, another eligible lender may be substituted for a lender who holds an outstanding Form FmHA 449–14, "Conditional Commitment for Guarantee," provided the borrower, loan purposes, scope of the project, and loan terms remain unchanged. After issuance of the Loan Note Guarantee and with prior written approval of the FmHA Administrator, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the FmHA Administrator only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the FmHA Administrator, the State Director will submit to the Finance Office Form FmHA 1980–42, "Notice of Substitution of Lender."

§ 1980.819 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter for negotiation between the lender and FmHA.

(a) The maximum allowable guarantee will be 90 percent. Normally, guarantees will not exceed 80 percent unless extraordinary circumstances exist. The State Director will document these circumstances in the case file.

(b) Lenders and borrowers will propose the percentage of guarantee. FmHA informs lenders and borrowers in writing on Form FmHA 449–14, "Conditional Commitment for Guarantee," of any percentage of guarantee less than proposed by the lender and borrower, and the reasons therefore. FmHA determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) Borrower's management.

(2) Collateral.

(3) Financial condition.

(4) Lender's exposure (retain a minimum of 5% of the total unguaranteed loan(s) amount).

(5) Current trends and economic conditions.

§§ 1980.820–1980.822 [Reserved]

§ 1980.823 Interest rates.

(a) Rates will be negotiated between the lender and the borrower. They may be either fixed rates or variable rates. Interest rates will be those rates customarily charged borrowers in similar circumstances in the oridinary course of business and are subject to FmHA review and approval. FmHA will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(b) A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Any increase in interest rates will have to allow sufficient notice by the lender to the borrower for a reasonable period of time to obtain any required approval (such as from a State regulatory agency) or to meet other requirements to adjust the user rates. The interest rate will not be raised more than one percent per year. The intervals between interest rate adjustments will be specified in the loan agreement but not more often than annually. The interest rate should not be adjusted more than 5% during the life of the loan. The lender must incorporate within the variable rate bond or promissory note at

loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity and eliminate the possibility of a balloon payment at the end of the loan. The District Director will notify the Finance Office of any interest rate changes by using Form FmHA 1980–47, "Guaranteed Loan Borrower Adjustments" and will make corrections to the Rural Community Facility Tracking System.

(c) Any change in the interest rate between the date of issuance of the Form FmHA 449–14 and before the issuance of the Loan Note Guarantee (Form FmHA 449–34) must be approved by FmHA. Approval of such change will be shown on an amendment to Form FmHA 449–14.

(d) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar purpose for borrowers under similar circumstances.

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(e) When multi-rates are used, the lender will provide FmHA with the overall effective interest rate for the entire loan. Multi-rate loans must be either fixed or variable, but not both.

(f) The borrower, lender and holder (if any) may collectively effect a permanent reduction in the interest rate on their CP guaranteed loan at any time during the life of the loan upon written agreement by these parties. FmHA must be notified by the lender, in writing, within 10 calendar days of the change. If the guaranteed portion has been repurchased by FmHA, then FmHA is a holder, and must affirm or reject interest rate change proposals. When FmHA is a holder, it will concur in such interest rate change only when it is demonstrated to FmHA that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination will include whether the proposed interest rate will be below the Government's cost of borrowing money; whether continuing with the loan would realistically promote or enhance rural development, whether the monetary recovery would be increased by proceeding immediately to liquidation, if applicable; or allowing the borrower to continue at a reduced interest rate; and whether an in-depth financial analysis by the lender reasonably indicates that the project would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any. The FmHA file will reflect the documentation of the interest rate change decision.

(1) Fixed rates cannot be changed to variable rates to reduce the interest rate to the brorrower unless the variable rate has a ceiling which is less than the original fixed rate.

(2) Variable rates can be changed to a lower fixed rate. In a final loss settlement, when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect, except that interest claimed on a loan which originated at a variable rate, can never exceed the amount which would have been eligible for claim, had the variable rate remained in force. The lesser cost to the Government will always prevail. The lender must maintain records e which adequately document the accrued interest claimed.

(3) The lender is responsible for the legal documentation of interest changes by a rider attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note(s) may be issued.

(g) No increases in interest rates will be permitted under the CP loan guarantee except the normal fluctuations in approved variable interest rate loans.

(h) FmHA will notify the Finance Office of any interest rate reduction by using Form FmHA 1980–47, "Guaranteed Loan Borrower Adjustments." The District Director will make corrections to the Rural Community Facility Tracking System (RCFTS) reflecting the interest rate change. The FmHA loan file, as well as the attachments to the copy of the promissory note in the file, will be documented by the District Director to reflect any change in the interest rate.

§ 1980.824 Terms of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the debt instrument except, any interest accrued as the result of the borrower's default on the guaranteed loan(s) over and above that which would have accrued at the debt instrument rate on the guaranteed loan(s) will not be guaranteed by FmHA. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within two years from the date of the debt instrument and at least annually thereafter. Interest will be due at least annually from the date of the debt instrument. Ordinarily, monthly payments will be expected, except for borrowers with income limited to less frequent intervals.

(b) The maximum time allowable for final maturity for an FmHA guaranteed CP loan will be limited to the useful life of the facility, not to exceed forty (40) years.

(c) FmHA will not guarantee any loan in which the bond or promissory note or any other document provides for the payment of interest upon interest.

§§ 1980.825—1980.831 [Reserved]

§ 1980.832 Environmental requirements.

The environmental requirements for this subpart are set out at § 1980.40 of subpart A of this part and subpart G of part 1940 of this chapter.

§ 1980.833 Flood or mudslide hazard area precautions.

The flood or mudslide hazard area precuations required for this subpart are set out at § 1980.42 of subpart A of this part.

§ 1980.834 Equal opportunity and nondiscrimination requirements.

The equal opportunity and nondiscrimination requirements for this subpart are set out at § 1980.41 of subpart A of this part.

§§ 1980.835—1980.841 [Reserved]

§ 1980.842 Feasibility studies.

(The feasibility studies requirements, delineated at § 1942.17(h) of subpart A of part 1942 of this chapter, apply as well to this subpart.

§ 1980.843 Security.

(a) The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA.

(b) Security must be of such a nature that repayment of the loan is reasonably assured when considered with the

integrity and ability of project management, soundness of the project, and the applicant's prospective earnings. The security may include but is not limited to the following: General Obligation Bonds, pledge of taxes or assessments. facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, and cash or other accounts. Security may also include assignments of leases or leasehold interest.

(c) All security must secure the entire loan. The lender will not take separate security to secure only the unguaranteed portion of the loan. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan.

§ 1980.844 Appraisal reports.

(a) *Essential community facilities.*

(1) Appraisal reports prepared by independent third party qualified fee appraisers will be required on all property that will serve as collateral. For loans of $2 million or less, the State Director may modify this requirement by permitting the appraisal to be made by a qualified appraiser on the lender's staff with experience appraising the type of collateral involved. The appraisers will give their opinion regarding the current market value of the collateral and the purpose for which the appraisal will be used. The lender will be responsible for assuring that appropriate appraisals are made.

(2) The lender will be responsible for determining that appraisers have the necessary qualifications and experience to make the appraisals.

(3) The lender will determine that the fees or charges of appraisers are reasonable.

(4) Independent appraisals will be made in accordance with the accepted format of the industry and those prepared by the lender in accordance with its policy and procedures. All appraisals will become part of the application.

(5) If a subsequent loan request is made within 3 years from the date of the most recent borrower's appraisal report, and there is no significant change in the collateral, then the FmHA State Director at his/her discretion, and if the lender agrees, may use the existing appraisal report in lieu of having a new appraisal prepared.

(b) *Utility-type projects.* The borrower is responsible for the acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. An independent appraiser may be utilized.

§§ 1980.845—1980.850 [Reserved]

§ 1980.851 Processing applications.

(a) *Preapplications.* (1) The County Office may handle initial inquiries and provide basic information about the program. They are to provide Standard Form (SF) 424, "Preapplication for Federal Assistance." The County Supervisor will assist applicants as needed in completing SF–424 and in filing written notice of intent and request for priority recommendations with the appropriate clearinghouse (except Federally recognized Indian tribes which will be dealt with in accordance with § 1940.453(c) of subpart J of part 1940 of this chapter). The County Supervisor will inform the applicant that if credit for the project is available from commercial sources without the guarantee at reasonable rates and terms, the borrower is not eligible for a loan guaranteed by FmHA. Preapplications filed in the County Office will be forwarded immediately to the District Office. The applicant will be informed that further processing will be handled by the District Office. An information folder will be established and maintained by the County Office once a preapplication is received. In the event the preapplication is filed in the District Office, the District Director may assist the applicant in completing the preapplication requirements. The District Director will meet with the applicant whenever appropriate, to discuss FmHA preapplication processing. The appropriate information to set up the County Office information file will be sent to the County Supervisor by the District Director. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully reviewed. The District Director will then forward the preapplication package to the State Director. The preapplication package will contain:

(i) Eligibility determination and recommendations.

(ii) One copy of SF–424.

(iii) State intergovernmental review comments and recommendations for the borrower's project (clearinghouse comments.)

(iv) Priority recommendations.

(v) Supporting documentation necessary to make an eligibility determination, such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise applicants on what documents are necessary. Applicants should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage.

(vi) Information on applicant.

(2) The State Director will review each SF–424 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available without a guarantee. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant.

(3) If preapplication information indicates the project is ineligible, does not have sufficient priority, or that funds or guarantee authority are not available for the project, FmHA will so inform the applicant. The applicant will be notified in writing with all reasons for the decision indicated. If it appears that the project is eligible, has sufficient priority, is economically feasible, and loan guarantee authority is available, FmHA will inform the applicant and borrower in writing and request that they complete the application. The applicant must be informed that an environmental review has not been conducted and no major commitment should be made that could affect the consideration of alternatives.

(b) *Applications*—(1) *Application conference.* When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms, and furnish guidance necessary for orderly application processing. The District Director will confirm decisions made at this conference by letter to the applicant. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conferences.

(2) *Content of Application.*

(i) Form FmHA 1980–10, "Application for Loan and Guarantee."

(ii) Form FmHA 1940–20, "Request for Environmental Information."

(iii) Preliminary architectural or engineering plans as appropriate, in accordance with Guides 6, 7, and 8 of subpart A of part 1942 (available in any FmHA office).

(iv) Cost estimates.

(v) Appraisal reports (as appropriate).

(vi) Any credit reports obtained by the lender or FmHA on the borrower.

(vii) Form FmHA 400–1, "Equal Opportunity Agreement."

(viii) Copies of building permits, if applicable, and any necessary certifications and recommendations of

appropriate regulatory or other agencies having jurisdiction over the project.

(ix) Financial feasibility study, when required.

(x) Proposed loan agreement.

(xi) Complete environmental review.

(xii) Any additional information as may be required.

(3) *Review of decision.* If at any time prior to issuance of the conditional commitment, it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant under subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action. "The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580."

§ 1980.852 FmHA evaluation of application.

FmHA will complete Form FmHA 1942–45, "Project Summary—Water and Waste Disposal and other Utility-type Projects," or Form FmHA 1942–43, "Project Summary Community Facilities (Other Than Utility-type Projects)," as appropriate, evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, and that there is reasonable assurance of repayment ability, sufficient collateral and sufficient equity, the proposed loan complies with all applicable statutes and regulations, and adequate funds are available. The FmHA Architect/Engineer will review the Preliminary Architect/Engineer reports and provide comments on the appropriate Project Summary. If FmHA determines it is unable to guarantee the loan the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If FmHA conditionally commits to guaranteeing the loan after the receipt of a completed application in accordance with FmHA Instruction 1980–A, section 1980.47, it will provide the lender and the borrower with Form FmHA 449–14, listing all conditions for such guarantees. FmHA will include in the requirements of the Conditional Commitment for Guarantee, a full description of the approved use of guaranteed loan funds as reflected in the Form FmHA 1980–10, "Application for Loan and Guarantee (Community Facilities)."

§ 1980.853 Loan approval and obligating funds.

The State Director will prepare an original and two copies of Form FmHA 1940–1 for each loan to be obligated. Also, for each initial loan, Form FmHA 1980–50, "Add, Delete, or Change Guaranteed Loan Borrower Information," will be prepared. The State Director will sign the original and one copy and conform the second copy. Form FmHA 1940–1 will not be mailed to the Finance Office. Notice of approval to lender will be accomplished by providing or sending the lender the signed copy of Forms FmHA 1940–1 and 449–14 on the obligation date, unless the Administrator has given prior authorization to the Finance Office to obligate before the 6-day reservation period and directs the State Director to forward Form FmHA 1940–1 to the lender in advance of issuance of Form FmHA 449–14. The State Director or designee will record the actual date of lender notification on the original of the Form FmHA 1940–1 and retain the original of the form and the remaining conformed copy of Form FmHA 1940–1. The State Director or designee will use the State Office terminal to request reservation/obligation of funds. Use of the telephone for the reservation/obligation of funds is restricted to those instances when the State Office terminal is inoperative. Form FmHA 1980–50 will be prepared and distributed for initial loans only.

(a) Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in rejection of the request for reservation of authority. After the security code is furnished, all pertinent information contained on Form FmHA 1940–1 will be furnished to the Finance Office. Upon receipt of the telephone request for reservation of authority, the Finance Office will record all information necessary to process the request for reservation in addition to the date and time of the request.

(b) The individual making the telephone request will record the date and time of the telephone request and place his/her signature in section 41 of Form FmHA 1940–1.

(c) The Finance Office will terminally process telephone reservation requests. Those requests for reservations received before 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which the reservation will be processed on the next working day.

(d) Each working day the Finance Office will notify the State Office by telephone of all projects for which authority was reserved during the previous night's processing cycle and the date of obligation. If authority cannot be reserved for a project, the Finance Office will notify the State Office that authority is not available within the State allocation. The obligation date will be 6 working days from the date of the request for reservation of authority which is being processed in the Finance Office. Immediately after notification by telephone of the reservation of authority, the State Director will call the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015–C (available in any FmHA office).

§ 1980.854 Projects requiring National Office review.

(a) The following will be submitted to the National Office when the loan guarantee is not within the State Director's approval authority.

(1) Transmittal memorandum including:

(i) Recommendation.

(ii) Date of expected obligation.

(iii) Any unusual circumstances.

(2) Preapplication package.

(3) Application package.

(4) Project Summary (Form FmHA 1942–45 or 1942–43).

(5) Completed envornmental review and documentation.

(b) For applications to be reviewed in the field, at least those items in paragraphs (a)(2) through (4) of this section, should be available.

§ 1980.855 Review of requirements.

(a) Immediately after reviewing the conditions and requirements in Form FmHA 449–14, the lender and borrower should complete and sign the "Acceptance of Conditions," and return a copy to the FmHA District Director. If certain conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA.

(b) If the lender indicates in the "Acceptance of Conditions" that it desires to obtain a Loan Note Guarantee (Form FmHA 449–34), and subsequently

decides at any time after receiving a conditional commitment that it no longer wants a guarantee, the lender will immediately advise the FmHA District Director.

§ 1980.856 Conditions precedent to issuance of the Loan Note Guarantee (Form FmHA 449-34).

In addition to compliance with the requirements of § 1980.60 of subpart A of this part, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee.

(a) *Transfer of lenders.* With prior written concurrence of the FmHA Administrator, the FmHA approval official may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment for Guarantee (where Loan Note Guarantee has not yet been issued) provided, there are no changes in the borrower's ownership or control, loan purposes, scope of project, and loan conditions in the Form FmHA 449-14, and the loan agreement remains the same. To effect such a substitution, the former lender will provide FmHA with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part "B" of Form FmHA 1980-10. If approved by FmHA, the Administrator will issue a letter of amendment to the original Form FmHA 449-14 reflecting the new lender who will acknowledge acceptance of the letter or amendment in writing. If the Loan Note Guarantee has been issued, the provisions of paragraph § 1980.818(b) regarding substitution of lender must be followed.

(b) *Substitution of borrowers.* FmHA will not issue a Loan Note Guarantee to the lender who is in receipt of a Form FmHA 449-14 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) or owners are changed. The only exception to this provision prohibiting a change in the legal entity's form of ownership is when the originally approved borrower or owner is replaced with substantially the same individuals with substantially the same interests, as originally approved and identified in Form FmHA 1980-10. All requests for exceptions must be approved by the FmHA National Office.

(c) *Changes in terms and conditions in Form FmHA 449-14.* It is the intent of FmHA that once Form FmHA 449-14 is issued and accepted by the lender, the Commitment shall not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or terms and conditions. Only minor changes will be considered, unless otherwise provided for in this subpart. All requests for changes will require National Office approval.

(d) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact FmHA and provide those documents and certifications required in §§ 1980.60 and 1980.61 of subpart A of this part. For any loans involving bonds, the opinion of the recognized bond counsel will be reviewed to determine the adequacy of the bonds issued or to be issued. Only when the District Director is satisfied that all conditions for the guarantee have been met, will the Loan Note Guarantee be executed.

(e) *Title for land, rights-of-way, or easements.* Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility.

(2) A title report by the borrower's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to obtain and record such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities, such as a reservoir or pumping station, and the lender is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, such a title report should be requested.

(f) *Loan closing.* When loan closing plans are established, the lender will notify FmHA.

§ 1980.857 Issuance of lender's agreement, loan note guarantee, contract of guarantee, and assignment guarantee agreement.

Compliance with § 1980.61 of subpart A of this part is required for this subpart.

§§ 1980.858-1980.868 [Reserved]

§ 1980.869 Design and construction.

Specifications for design and construction provided at § 1942.18(d), (j)(1) and (2), and (n)(1), (2), (4), (5), (6), and (11) of subpart A of part 1942 of this chapter also apply to this subpart. The lender will provide FmHA with a written certification at the end of construction that all funds were utilized for authorized purposes. The lender will also certify that the FmHA design policies have been met. The lender will monitor the progress of construction and undertake the reviews and project inspections necessary to reasonably assure that funds are used for eligible project costs and that problems in project development are expeditiously reported to the District Director.

§ 1980.870 Loan servicing.

The lender will be responsible for servicing the entire loan in accordance with the lender's loan agreement. The lender will notify FmHA of any violations of the lender's loan agreement.

(a) The lender will require, at a minimum, annual audited financial statements which will be reviewed by the lender and a copy forwarded to the FmHA District Office with a summary evaluation by the lender. After receipt of the evaluation, the District Director will determine if a joint FmHA lender and borrower site visit will be necessary. Site visits will be conducted at least once every three years but may be scheduled more frequently if conditions warrant. Delinquent borrowers will be visited at least annually. The State Director may waive the audit requirement for financial statements on loans with an unpaid principal balance of $100,000 or less.

(b) The District Director or his/her designated representative will meet annually with each lender or his/her agent with whom a CP loan guarantee is outstanding. At this meeting, a review will be made of the lender's performance in loan servicing and a determination of any future actions needed. This meeting will be documented in the running record for each borrower serviced by the lender and followed by a letter to the lender. The letter shall be placed in each borrower's case file.

§ 1980.871 Defaults by borrower.

(a) In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the District Director or designated representative and borrower to resolve the problem. A memorandum of the meeting listing the individuals in attendance and summarizing the problem and proposed solution will be prepared by the FmHA representative and retained in the loan file. When the State Director receives a notice of default on a loan, he/she will immediately notify the National Office

in writing of the details. The District Director will notify the lender and borrower of any decision reached by FmHA.

(b) In considering servicing options, some of which are identified in paragraph X. A of Form FmHA 449–35, "Lender's Agreement," the prospects for providing a permanent cure without adversely affecting the risks to FmHA and the lender must become the paramount objective. Within the State Director's authority, temporary curative actions such as payment deferments, moratoriums on payments, or collateral subordination, must strengthen the loan and be in the best interests of the lender and FmHA. Some of these actions may require concurrence of the holder(s). A deferral, rescheduling, reamortization, or moratorium is limited by the period of time authorized by this subpart for the purpose for which the loan(s) is made or the remaining useful life of the collateral securing the loan.

(c) If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing action. In these situations when FmHA is holder of some of the notes, the State Director may endorse the notes back to the lender after the State Director has sought the advice and guidance of the Office of the General Counsel (OGC), provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will FmHA endorse the original Form FmHA 449–34 to the lender.

(d) When the National Office determines it is necessary in individual cases, due to some special servicing requirements, it may at its option assume the servicing responsibility.

(e) The State Director will report all delinquent and problem loans quarterly to the appropriate National Office program division by the 10th day of January, April, July, and October.

(f) The District Director will notify the Finance Office on Form FmHA 1980–47 of any change in payment terms such as reamortizations or interest rate adjustments and effective dates of any changes resulting from servicing actions.

§ 1980.872 Liquidation.

Liquidation will be conducted in accordance with the lender's loan agreement and § 1980.64 of subpart A of this part.

(a) State Directors are authorized to approve lender liquidation plans as authorized on separate written approval authorities issued in accordance with subpart A of part 1901 of this chapter. Within delegated authorities, the State Director may approve a written partial liquidation plan submitted by the lender covering collateral that must be immediately protected or cared for in order to preserve or maintain its value. Approval of the partial liquidation plan must be in the best interest of the government. The approved partial liquidation plan is only good for those actions necessary to immediately preserve and protect the collateral and must be followed by a complete liqudiation plan prepared by the lender in accordance with the requirements of the lender's agreement.

(b) Collateral acquired by the lender can only be released after a complete review of the proposal.

(1) There may be instances when the lender acquires the collateral of a borrower where the cost of liquidation exceeds the potential recovery value of the security. Whenever this occurs, the lender with the concurrence of FmHA, can abandon the collateral in lieu of liquidation.

(2) Sale of acquired collateral to the former borrower, former borrower's stockholder(s) or officer(s), or the lender or lender's stockholder(s) or officer(s), will require the concurrence of FmHA.

(c) FmHA will exercise the option to liquidate only when there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When there is reason to believe the lender will not initiate efforts that will maximize recovery through liquidation, the State Director will forward the lender's liquidation plan, if available, with appropriate recommendations along with the State Director's exceptions to the lender's plan to the Director of the appropriate program division for evaluation and approval or rejection of the State Director's recommendation. The State Director has no authority to exercise the option to liquidate without National Office approval. When FmHA liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. In such instances the State Director will send to the Finance Office Form FmHA 1980–45, "Notice of Liquidation Responsibility" to notify the Finance Office that FmHA has liquidation responsibility and Form FmHA 1980–46, "Report of Liquidation Expense," to request payment of liquidation costs.

(d) State Directors are responsible for review and acceptance of accounting reports as submitted by lenders and for submission of such reports to lenders when FmHA is conducting liquidation.

(e) State Directors are authorized to approve final reports of loss from the lender in separate written approval authorities issued in accordance with subpart A of part 1901 of this chapter. The State Director will submit to the Finance Office for payment any loss claims of the lender on Form FmHA 449–30, "Loan Note Guarantee Report of Loss." The Finance Office forwards loss payment checks to the State Director for delivery to the lender. When a loss claim is involved on a particular loan guarantee, ordinarily one estimated "Report of Loss" will be authorized. In the case of bankruptcy, more than one estimated "Report of Loss" may be authorized. Only one final "Report of Loss" will be authorized. A final Form FmHA 449–30 must be filed with the Finance Office at the completion of all liquidations. The Finance Office will use this form to close out the account.

(f) Final loss payments will be made within the 60 days required, but only after a review by FmHA to assure that all collateral for the loan has been properly accounted for and liquidation expenses are reasonable and within approved limits. State Directors are responsible to see that such reviews are accomplished by the State within 30 days, and final loss claims in excess of the State Director's approval authority are forwarded to be accepted or otherwise resolved by the appropriate National Office program division within the 60-day period. Any estimated loss payments made to the lender must be taken into consideration when paying a final loss on the FmHA guaranteed loan. The estimated loss payment must be treated as a deduction from the principal amount of the loan that is equal to the estimated loss payment. The State Director may request National Office assistance in the conduct of any review. All reviews for final loss claim in excess of the State Director's approval authority (See subpart A of part 1901 of this chapter) will be submitted to the appropriate National Office program division for concurrence prior to the State Director's approval of the claim. Close scrutiny of liquidation proceeds and their application in accordance with lien priorities is required. Before final loss payments are approved and to assist in the required review, the State Director will prepare a narrative history of the guarantee transaction which will serve as the summary of occurrences which led to failure of the borrower and actions taken to maximize loan recovery. The original of this report will be filed in the loan case file.

§ 1980.873 Protective advances.

Protective advances may be made in accordance with the lender's loan

agreement and § 1980.65 of subpart A of this part.

(a) The State Director must approve in writing, all protective advances on loans within his/her loan approval authority which exceed a total cumulative advance of $500 to the same borrower. Protective advances must be reasonable when associated with the value of collateral being preserved.

(b) When considering protective advances, sound judgement must be exercised in determining that the additional funds advanced will actually preserve collateral interests and recovery is actually enhanced by making the advance.

§ 1980.874 Additional loans or advances.

The State Director may approve within his/her loan approval authority additional nonguaranteed loans or advances prior to or subsequent to the issuance of the Loan Note Guarantee (Form FmHA 449–34). The State Director shall determine that there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely to adversely affect the collateral or the guaranteed loan.

§ 1980.875 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion of a pending chapter 11 case to a liquidation proceeding under chapter 7 or under section 1123(b)(4), or seek dismissal of the proceedings.

(5) FmHA will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a chapter 9 or chapter 11 reorganization, if an independent appraisal in necessary in FmHA's opinion, FmHA and the lender will share such appraisal fee equally.

(c) Expenses on chapter 11 reorganizations, chapter 11 or chapter 7 liquidations (unless the lender is directly the liquidator) are not to be deducted from the collateral proceeds.

(d) All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

(e) FmHA or the lender, with the approval of the State Director, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during certain bankruptcy proceedings. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accrual during chapter 7 proceedings or after a chapter 11 proceeding becomes a liquidation proceeding. If the lender is the holder, an estimated loss payment may be filed at the initiation of a chapter 7 proceeding or after a chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be handled in accordance with the lender's agreement (Form FmHA 449–35) and carry the approval of the State Director.

(f) The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

§ 1980.876 Transfer and assumptions.

(a) *General.* It is the policy of FmHA to approve transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan. All transfers and assumptions will be approved in writing by FmHA. Transfers and assumptions may be approved subject to the following:

(1) When the transaction is to a member of the borrower's organization at a price which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference over transfers to ineligible borrowers, if recovery to the lender from the sale price is not less than it would be if the transfer was to an ineligible borrower.

(3) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan and the transfer will be to the lender's advantage.

(4) If the debt(s) is not equal to the present market value, the transferee will assume an amount at least equal to either the present market value or the debt, whichever is less. The percentage of FmHA's guarantee will be based on the new debt or the current market value, whichever is less.

(5) The lender concurs in the plans for dispositon of funds in the transferor's debt service, reserve, and operation and maintenance account.

(b) *Eligible borrowers.*

(1) The total indebtedness may be transferred to an eligible borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial guaranteed loan can be made.

(3) Less than the total indebtedness may be transferred to another borrower on the same or different terms.

(4) A guaranteed 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.

(5) If the transferor is to receive a payment for its equity, the total FmHA debt must be assumed.

(c) *Ineligible borrower.* Transfers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain an equity or as a method of providing a source of easy credit for purchasers. Transfers are as follows:

(1) All transfers to ineligible borrowers will include a one-time nonrefundable transfer fee. Transfer fees will be collected and payments applied in accordance with paragraph (d) of this section.

(2) For all loans covered by this subpart, the State Director, is authorized to approve a transfer of indebtedness to, and assumption of, a loan by a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible borrower will:

(i) Make a significant downpayment.

(ii) Agree to pay the remaining balance within not more than 15 years. Installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval. The rates may be either fixed or variable.

(i) Transferees must have the ability to repay the debt according to the assumption agreement and must have the legal authority to enter into the contract. The borrower will submit a current balance sheet. The lender will

obtain and analyze the credit history of the borrower. In all transfers, consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(ii) This subpart does not preclude the transferor from receiving equity payments when the full amount of the debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the debt will be paid.

(d) *Transfer fees.* Transfer fees are a one-time nonrefundable cost to be collected by the lender at the time of application or proposal.

(1) *Amount.* The transfer fees will be a standard fee plus the cost of the appraisal. This fee will be established by the FmHA National Office and issued annually to all FmHA State Offices for further distribution.

(2) *Remittance.* The lender will collect and submit the fee to the FmHA District Office. The FmHA District Office will submit the fee to the Finance Office identified as a transfer fee using Form FmHA 451–2, "Schedule of Remittance."

(3) *Waiver.* When the State Director determines waiving the transfer fee is in the best interest of the Government, the file will be submitted to the National Office with appropriate recommendations for the request.

(e) *Processing transfers and assumptions.*

(1) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence, only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt:

(i) FmHA must determine that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer.

(ii) The District Director must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the borrower's ability.

(2) The lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA review and approval, including any requirement for deposits in an escrow account as security to meet its determined equity requirements for the project.

(3) The lender will issue a statement to FmHA that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(4) The State Director may approve all transfer and assumption provisions if the guaranteed loan debt balance is within his/her loan approval authority including:

(i) Consent in writing to the release of the transferor and guarantors from liability.

(ii) Any changes in loan terms.

Note: The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) (Form FmHA 449–34) will be endorsed in the space provided on the form(s).

(5) A copy of the Assumption Agreement will be retained in the FmHA file. The District Director will notify the Finance Office of all approved transfer and assumption cases on Form FmHA 1980–7, "Notification of Transfer and Assumption of a Guaranteed Loan," and submit Form FmHA 1980–50, "Add, Delete, or Change Guaranteed Loan Borrower Information," for all new borrowers and Form FmHA 1980–51, "Add, Change, or Delete Guaranteed Loan Record," in order that Finance Office records may be adjusted accordingly.

(6) If the guaranteed loan debt balance is in excess of the State Director's loan approval authority, the State Director will forward the file, together with his/her recommendations, to the appropriate National Office program division for approval.

(7) The assumption will be made on the lender's form of assumption agreement and will contain the FmHA case number of the transferor and transferee.

(8) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by FmHA, with the concurrence of any holder(s) and the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(i) An explanation of the reasons for the proposed change in the loan terms.

(ii) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect, and all applicable Truth in Lending requirements will be met.

(9) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide FmHA a copy of the transfer and assumption agreeement. Notice must be given by the lender to FmHA before any borrower or guarantor is released from liability.

(10) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(11) If a loss should occur upon consummation of a complete transfer of assets and assumption for less that the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated "Report of Loss" on Form FmHA 449–30 to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form FmHA 449–30, lines 13 and 14.

(f) *Submission to National Office.*

(1) Under any of the following conditions, a proposed transfer or assumption will be forwarded to the National Office for prior review and approval before making any commitments:

(i) Where a loss to the Government will result; or

(ii) The prospective transferee is a member of the present borrower's organization; or

(iii) Proposals for transfer or assumption are made on more liberal terms than set forth in paragraphs (b) and (c) of this section; or

(iv) Proposals for cash downpayment to the present borrower in an amount which exceeds that actual sales expenses; or

(v) The transfer fee is to be waived for a prospective transferee.

(2) All submissions to the National Office will contain:

(i) Transfer case file.

(ii) OGC comments on the proposed transfer or assumption.

(iii) Appropriate forms to complete the transfer prepared by the transferee.

(iv) Completed environmental review.

(v) Any other necessary supporting information.

§ 1980.877 Mergers.

(a) *General.* State Directors are authorized to approve mergers or consolidations (which are herein referred to as mergers) when the

resulting organization will be eligible for an FmHA guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower.

(2) The resulting borrower can meet all required conditions as set forth in specific loan note agreements.

(3) All property can be legally transferred to the resulting borrower.

(4) The membership of each organization involved is made aware of the proposed merger.

(b) *Distinguishing transfers from assumptions.* Mergers occur when one corporation combines with another corporation in such a way that the first corporation ceases to exist as a separate entity while the other continues. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with the original corporations ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets, nor assume all the transferor's liabilities.

§ 1980.878 Disposition of acquired property.

(a) When the lender acquires title to the collateral through a voluntary basis or foreclosure means, and the FmHA final loss claim is not paid until final disposition, the lender should proceed as quickly as possible to develop a plan to see that the collateral is fully protected and a program to dispose of the collateral is commenced.

(b) Any collateral accepted by the lender on a voluntary basis or through foreclosure means *must* be titled in only the lender's name. FmHA should never be named as owner or co-owner of the collateral. FmHa's position is that of a guarantor.

(c) The first step the lender should take after acquiring the collateral is to see that the collateral is protected from deterioration (weather, vandalism). Hazard insurance in an amount necessary to cover the fair market value of the collateral should be maintained by the lender.

(d) The lender will prepare and submit to the District Director a plan on the best method of sale keeping in mind any prospective purchasers. The District Director will review and recommend action on the plan and forward the plan to the State Director for concurrence. Concurrence or non-concurrence of the plan shall be made in writing to the lender. If an existing liquidation plan addressed the disposition of acquired property, no further review is required unless modification of the plan is needed.

(e) Method of liquidation.

(1) Direct sale by lender.

(2) Commercial broker.

(i) Broker should be experienced in the type of property involved.

(ii) The written agreement with the broker should include an agreement which allows that if the lender finds a purchaser, no commission would be paid to the broker.

(iii) A maximum of 120 days should be allowed on the contract. The contract should be renewable if all parties agree.

(3) Public auction.

(i) An experienced professional auctioneer should be engaged.

(ii) Adequate advertising should be obtained.

(iii) The lender with FmHA concurrence shall determine a minimum sale price for the collateral.

(4) Abandonment of the collateral.

(i) The primary purpose of collateral is to afford a net return on the loan balance. However, there will be times when FmHA will be faced with situations when converting the collateral to cash would result in a loss.

(ii) Situations when this type of action could exist are:

(A) Senior lien claims held by other parties against the guaranteed loan collateral and the senior lien claims are more than the collateral value.

(B) Collateral on the loan has deteriorated to the point where the net sale value (after expenses) of the collateral would not produce any funds that could be applied to the outstanding debt.

(C) Specialized collateral which has little or no value or demand, taking into consideration the expenses of the sale.

(iii) Anytime there is a case when the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, abandonment of the collateral should be strongly considered. When a decision to abandon the property is made, the District Director will document the decision in the file and will advise the State Director of the decision.

§ 1980.879 State Director's additional authorizations and guidance.

All proposed servicing actions which the State Director or lender is not authorized by this subpart to approve will be referred to the National Office.

§ 1980.880 Appeals.

Appeals are handled in accordance with § 1980.80 of subpart A of this part and subpart B of part 1900 of this chapter.

§§ 1980.881-1980.899 [Reserved]

§ 1980.900 OMB Control Number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Mangement and Budget and have been assigned OMB control number 0575-0137. Public reporting burden for this collection of information is estimated to vary from 1 to 50 hours with an average of 20 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0137), Washington, DC 20503.

Dated December 29, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 90-6809 Filed 3-26-90; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 241

[INS Number: 1124-90]

RIN Number: 1115-AB33

Judicial Recommendations Against Deportation; Controlled Substance Violations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule will require additional data to be provided by an alien seeking a judicial recommendation against deportation in order to help identify him/her to the Immigration and Naturalization Service (Service). This change is necessary to ensure that the Service will be given sufficient information necessary to identify the alien who is the subject of a motion for a judicial recommendation against deportation. This change will permit the Service sufficient time to obtain any file

relating to the alien and to prepare a response, if desired, to the alien's motion for a judicial recommendation against deportation.

EFFECTIVE DATE: This final rule is effective April 26, 1990.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., room 7240, Washington, DC 20536, telephone: (202) 786–4502.

SUPPLEMENTARY INFORMATION: Section 241(b) of the Immigration and Nationality Act provides for a judicial recommendation against deportation. The Immigration and Naturalization Service (Service) last published implementing regulations at 32 FR 11517 on August 10, 1967. The Service has found it necessary to amend these regulations. This regulation increases the period of time in which the Service must be notified that a motion for a judicial recommendation against deportation has been made. The regulation will also require biographical information to help identify the alien who may be the subject of an INS file. The rule will place the burden on the alien or the alien's criminal defense counsel to provide the district director receiving notice of the motion with a copy of any order granting a judicial recommendation against deportation, certified as a true copy by the clerk of the court granting the motion. In deportation, exclusion, or rescission proceedings, the burden will be upon the alien to present to the special inquiry officer assigned the alien's case, a certified copy of the judicial recommendation against deportation when such recommendation will be the basis of denying any charges brought by the Service in proceedings against the alien. This change is necessary to ensure that the granting of a judicial recommendation against deportation is known to the Service and/or the special inquiry officer to avoid conducting unnecessary hearings. Clearly, the alien is in a better position than the Service to identify if the sentencing court granted the motion in his/her particular case, considering the countless number of such motions made by criminal alien defendants in any given year. Failure to furnish due notice, for any reason shall constitute a waiver by the alien of the introduction of a judicial recommendation against deportation into evidence, and of any reference to such judicial recommendation before a special inquiry officer.

The Service published a proposed rule in the **Federal Register** on January 4, 1989, at 54 FR part 154. The comment period for the proposed rule ended on February 3, 1989.

The Service received eleven comments. Each comment was reviewed, analyzed, and considered. Many comments recommended revision to the proposed regulation as follows:

One commenter suggested that motions for judicial recommendations be directed to the Immigration and Naturalization Service, district counsel covering the geographical area within which the court deciding the motion for a judicial recommendation against deportation is located, rather than to the district director. The suggestion will not be adopted at this time. The district director may choose to respond personally or choose the official acting for him/her.

Another commenter complained about the requirement of personal service upon INS stating that it would take hours to commute to another State to physically appear at an INS district office. Personal service is defined in 8 CFR 103.5a(a)(2). It includes mailing by certified or registered mail. The commenter did state that the U.S. mail has been quite effective in transmitting notice up until now. Other commenters repeated this concern and solution. INS agrees with the commenters and will modify the final rule to permit transmittal of a judicial recommendation against deportation to be made by any means set forth in 8 CFR 103.5a, including routine service by ordinary U.S. mail.

One commenter stated that the Service should require additional information. It was suggested that the information include: (1) The full name of the defendant as known to the court as well as the name known to the Service; (2) the status of the defendant in the United States as defined by the Immigration and Naturalization Service; (3) the crimes for which the defendant is being sentenced as well as the statute under which the defendant is being sentenced; (4) the date and time of sentencing; (5) if the defendant has been sentenced or is the subject of a plea bargain, the length of sentence; (6) whether the sentence renders the crime a felony, misdemeanor, petty offense, or "undesignated" crime under sentencing authority definition; (7) citation to the statute or case law which renders the conviction to be a crime involving moral turpitude; (8) prior criminal convictions and all the information set forth in items #2, 3, 5, 6, and 7. The Service agrees with the commenter as to items #1, 3, 4, 5, 6, and 8, and will require the information suggested. This information will assist the Service in locating any current INS files on the alien and in responding to the motion for a judicial recommendation against deportation. The Service believes that the other information suggested by the commenter is beyond the scope of the INS's present needs.

A commenter stated that the motion for a judicial recommendation against deportation should follow the local rules of court as to the form of the motion. The court where the motion is being made will require that local rules be followed. The Service does not believe that it is the appropriate entity to require that the local rules be followed.

A commenter objected to aliens having to notify the Service of the disposition of the motion, stating that this responsibility should fall on the district counsel. The judicial recommendation against deportation is considered to be a form of relief from deportation. Relief from deportation is a discretionary benefit available to the alien; therefore, the burden is on the alien to prove that he/she falls squarely within the confines of the benefit. The alien has a strong interest in proving to the Service that he or she cannot be deported if the criminal conviction for which a judicial recommendation has been made is the basis for the deportation charge. Providing evidence that the court granted a motion for a judicial recommendation against deportation could help avoid unnecessary, possibly improper, arrests and detention. The Service simply does not have the resources to follow up on the vast number of motions received annually. The alien has only to follow up on one recommendation which was purportedly obtained to avoid expulsion proceedings. Logically, an alien would not choose to keep a favorable recommendation from being transmitted to the Service as expeditiously as possible.

Another commenter questioned or criticized why INS did not authorize service upon a sub-office as opposed to the district office. It is the responsibility of the district director to decide the representation made to the court. The district director has the right to see the motion and communicate his/her wishes to the sub-office. Also, it would be the normal practice for a district director to consult legal counsel on such matters. However, every district has a district counsel who is responsible for the conduct of legal affairs in that district. Therefore, service will be on the district director.

One commenter stated that the regulation duplicated efforts by requiring service of a certified copy of

the recommendation on the district director and the special inquiry officer. This is not meant to be the case. If a defense counsel or the alien applies for a judicial recommendation, and receives one, the rule requires that a certifed copy be sent to the district director. If the criminal conviction for which a judicial recommendation has been made is the basis for the deportation charge, the alien should bring the recommendation to the attention of the Service. Second, special inquiry officers have been separated from the Immigration and Naturalization Service. As a result of the reorganization, special inquiry officers are part of the Executive Office for Immigration Review (EOIR). EOIR became a separate component agency of the Department of Justice on February 15, 1983. Service upon INS does not constitute service upon EOIR.

A commenter maintained that the Service was adding another layer of paperwork and placing more procedural roadblocks that can be used to deport aliens even when a judicial recommendation has been granted. This is not the intention of the Service. INS wishes to be notified of the motion with sufficient time to respond and to be able to clearly identify whether the individual in question is an alien and to be able to ascertain his/her status in the United States.

Several commenters complained that INS was requesting too much information regarding the alien. One commenter stated that the information is being requested to establish deportability rather than to locate the alien's file. Another commenter stated that the information required by the proposed rule is "overbroad" and is not authorized by section 241(b) of the Act. Section 103(a) of the Act requires the Attorney General to establish such regulations as he deems necessary for carrying out his authority under the provisions of the Act. The Attorney General has delegated certain rule making authority to the Commissioner of the Immigration and Naturalization Service. The provisions of the Federal Register Act, 44 U.S.C. 301–314, as amended, and of the regulations thereunder (1 CFR-Administrative Committee of the Federal Register) as well as the provisions of section 553 of title 5 of the United States Code governing the issuance of regulations are observed. The commenter did not mention which areas he felt were overbroad. The Service does not believe the information is burdensome to obtain in the overwhelming majority of cases. The information is necessary to locate a record through INS's automated record system and to differentiate among persons with similar names and nationalities. It will also help the Service determine whether or not an individual is subject to expulsion proceedings. This knowledge will help the Service determine whether or not an actual appearance in court is necessary.

One commenter objected to the proposed requirement that the alien provide a copy of the alien registration or a declaration that no such registration exists. The stated reason for the objection is that the requirement places an undue and onerous burden on the alien and defense counsel. Furthermore, an alien living alone may be unable to personally obtain those documents. Family members cannot always be relied upon to supply the alien registration or copies thereof. If the police are holding or have "vouchered" the alien's personal papers, the commenter maintains it would be very time consuming to get them back. The Service disagrees. 8 U.S.C. 1304(e) imposes criminal penalties upon every alien, eighteen years of age and over, who fails to have in his/her personal possession any certificate of alien registration or his/her alien registration receipt card. It is expected that aliens will abide by this law; therefore, this regulation is reasonable. If the document is vouchered by the police, asking for a copy of the document as opposed to asking for the physical return of the document should not cause great inconvenience.

Another commenter mentioned his belief that the proposed regulation is punitive and is being used to locate the alien, rather than to ensure sufficient time to present argument to a court. The Service categorically denies that the changes are punitive in nature. Moreover, the alien will normally be incarcerated or present in court when the motion is being argued.

The proposed rule does not require that the INS be given information concerning the whereabouts of the alien. However, 8 U.S.C. 1305(a), requires that an alien report in writing a change of address to the Attorney General within ten days from the date of such change.

A commenter stated that INS investigators should obtain the court records to determine if a judicial recommendation has been granted at the same time that the investigators are obtaining the conviction record to be used as a basis of deportation. The Service disagrees. The Service is charged for court records by the number of pages provided. The judicial recommendation benefits individual aliens and their family members more directly than it benefits society at large. Futhermore, since the Service obtains many records through the mail, the Service investigator would be relying on the court clerk to accurately review the docket for an entry concerning a motion for a judicial recommendation. If an error occurs, the Service may end up detaining an individual unnecessarily or deport someone in error. Placing the burden on the alien to provide evidence of a certified court record of the grant of a judical recommendation is the most equitable allocation for all parties concerned. The alien is already physically present in court and is concerned with only one judicial recommendation against deportation. It would be a minor expense to the alien to obtain the requested certified copy of the judicial recommendation, if granted. This must be contrasted to the burden and expense on the Service to obtain innumberable certified copies of judicial recommendations against deportation.

One commenter also argued that it would be a violation of due process to consider a timely judicial recommendation against deportation invalid solely because defense counsel failed to send the INS a certified copy of the order recommending against deportation. The INS notes that the failure of the alien or his representative to provide a certified copy of the judicial recommendation against deportation to the INS may result in the alien being served with an Order to Show Cause. In such an event, the burden will be on the alien to present a certified copy of the judicial recommendation against deportation to the Service in advance of the hearing and to the special inquiry officer at the time of the hearing so that proceedings can be terminated if the judicial recommendation against deportation relates to the charge being used as the basis for deportation or exclusion.

The same commenter stated that the information requested is a possible violation of the alien's fifth amendment rights. Case law states that information elicited from aliens regarding the alien's status and right to remain in the country does not violate the fifth amendment as long as that information is used only to prove deportability and not to prove criminal liability.

Lastly, the commenter stated that the information requested is a possible violation of the attorney-client privilege. The Service disagrees. Like many other applications for a benefit under the immigration laws, e.g., suspension of deportation, intrusive questions are asked. An alien is never obligated to apply for discretionary relief such as

suspension of deportation or a judicial recommendation against deportation. The alien's counsel can infrom the client that the information being solicited by INS is not going to be held in confidence.

Several commenters complained about the Service requiring fifteen days notice instead of the present five day notice requirement, suggesting that this violated due process given that a disposition of the motion is required within thirty days of sentencing. One commenter suggested that ten days are reasonable. Another commenter indicated that existing federal law allows five days notice in federal court. One commenter stated that there are difficulties in scheduling hearings on the criminal court calendar and that there are tremendous time pressures on the criminal defense bar, especially Legal Aid attorneys and court appointed attorneys representing indigent clients. Another argument advanced is that the criminal defense attorney would have to research an unfamiliar area of the law. The same commenter indicated that it would be difficult to obtain the required information from the alien or the alien's family if the alien is incarcerated. It was stated that if the sentencing judge is ill, out of town, or has a full calendar, it is quite possible that a favorable order may not be issued within 30 days of the sentencing hearing. The Service believes that fifteen days is the time needed to obtain a file and prepare briefs or have an investigation conducted to gather evidence either in favor of or in opposition to the motion. Normally, criminal cases are not disposed of in a matter of days from time of arrest to time of sentencing. The alien's counsel has plenty of time to prepare for drafting and arguing the motion for a judicial recommendation. The argument that the criminal defense lawyer is not familiar with the procedures to obtain a judicial recommendation against deportation and must contact or refer the alien to an immigration law specialist simply lacks merit. The procedures are not so complicated that a criminal defense lawyer cannot quickly absorb them or realize early on that the case necessitates association with an immigration law specialist. Finally, section 242(b) of the Immigration and Nationality Act requires that the judicial recommendation against deportation must be entered not later than 30 days from the time of the imposition of sentencing *inter alia*. The INS suggests that the private bar make the judge aware that, to be valid, the judicial recommendation must be made within the statutory time frame.

One commenter stated that the recommendation should be limited to cases involving controlled substances when the judge imposes a sentence that is suspended or deferred. Section 241(b) of the Immigration and Nationality Act specifically precludes judicial recommendations against deportation in cases involving controlled substances and deportability under section 241(a)(11) of the Act.

A commenter disagreed with the determination that the proposed rule will not have a significant impact on a substantial number of small entities. Assuming, arguendo, that practicing attorneys are considered small entities, the Service does not believe the impact of the proposed rule to be significant. The Service also does not believe the proposed rule will affect a substantial number of entities.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation is being submitted to the Office of Management and Budget for approval in accordance with the provisions of the Paper Reduction Act. This collection will become effective after it has been approved by OMB.

List of Subjects in 8 CFR Part 241

Administrative practice and procedure, Aliens, Deportation.

Accordingly, part 241 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 241—JUDICIAL RECOMMENDATIONS AGAINST DEPORTATION; CONTROLLED SUBSTANCE VIOLATIONS

1. The authority citation for part 241 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1251, 1252, 1357; 8 CFR part 2.

2. Section 241.1 is revised to read as follows:

§ 241.1 Notice; recommendation.

(a) For the purposes of clause 2 of section 241(b) of the Act, notice to the district director having administrative jurisdiction over the place in which the court imposing sentence is located shall be regarded as notice to the Service. The notice shall be transmitted to the district director by the defendant or by counsel for the defendant not less than 15 days prior to the date on which the court will hear the defense motion for a judicial recommendation against deportation. When less than 15 days notice is received, an objection shall be interposed to the recommendation against deportation on the ground that due notice was not received. If the notice is received after the running of the 30-day statutory period, it shall be regarded as an invalid notice. Failure to furnish due notice for any reason shall constitute a waiver by the alien of the introduction of a judicial recommendation against deportation into evidence, and of any reference to such judicial recommendation before a special inquiry officer. The notice to the district director shall include the following:

(1) The true and complete name of the defendant;

(2) The full name of the defendant as known to the court;

(3) The full name of the defendant as known to the Immigration and Naturalization Service;

(4) Any aliases by which he or she has been known or has himself or herself used:

(5) Date of birth;

(6) Place of birth including country;

(7) Country of citizenship;

(8) Alien registration number(s), if any;

(9) Date, place and manner by which he or she last entered the United States. The manner of entry will include where applicable, the vehicle, vessel, or aircraft used to arrive in the United States;

(10) Crime(s) for which defendant is being sentenced;

(11) Statute(s) under which the defendant is being sentenced;

(12) If already sentenced, or if the subject of a plea bargain, amount of time imposed to be incarcerated;

(13) Whether the sentence renders the crime a felony, misdemeanor, petty offense, or undesignated crime under sentencing authority definition;

(14) A court certified copy of the pre-sentence report;

(15) Date and time of sentencing;

(16) A statement of the defendant's criminal convictions listing the sentencing jurisdiction and the information requested in paragraphs (a)(10), (11), and (12) of this section.

(b) If the foregoing information is unavailable and cannot be reasonably discovered, a declaration under the penalty of perjury shall be attached to the notice which states the particular information that is unavailable, the reasons for the unavailability, and the

steps that have been taken to obtain the required information required in paragraph (a) of this section. The notice shall be accompanied by either a copy of the defendant's alien certificate of registration or alien registration receipt card, if any, or an additional declaration, under the penalty of perjury that no such certificate of registration or receipt card exists. The forms listed in 8 CFR 264.1(b) shall constitute evidence of registration. Failure to comply with the requirements in paragraph (a) or (b) of this section will be treated as a failure to provide the INS with due notice of the motion for a judicial recommendation against deportation.

(c) The district director, or an official acting for him or her, in presenting representations to the court, shall advise the court of the effect that a favorable recommendation would have upon the alien's present and prospective deportability. It shall be the duty of the defendant or defense counsel to serve a court certified copy of the judicial recommendation against deportation on the district director to whom notice of the motion was sent. Service may be by any means set forth in 8 CFR 103.5a. Such service shall be regarded as made to the Attorney General.

(d) In any deportation, exclusion, or rescission proceeding conducted before a special inquiry officer, it shall be the duty of the respondent or applicant to provide a court certified copy of the judicial recommendation against deportation to the special inquiry officer when such recommendation will be the basis of denying any charges brought by the service in the proceedings against the respondent or applicant.

Dated: February 13, 1990.

Clarence M. Coster,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 90-6894 Filed 3-26-90; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 78

[Docket No. 89-225]

RIN 0579-AA27

Swine Identification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding swine identification to require that swine in interstate commerce, with certain exceptions, be identified at whichever of the following comes first: (1) The point of first commingling of the swine in interstate commerce with swine from any other source; (2) upon unloading of the swine in interstate commerce at any livestock market; (3) upon transfer of ownership of the swine in interstate commerce; or (4) upon arrival of the swine in interstate commerce at their final destination. These changes are necessary to provide a system of swine identification that allows for effective traceback of diseased or adulterated swine, without unnecessarily disrupting standard marketing procedures. We are also making certain amendments regarding the list of approved means of identification for swine, in order to clarify our requirements and to allow for the use of an additional device effective in identifying swine in interstate commerce. Additionally, we are clarifying who within the Animal and Plant Health Inspection Service holds primary responsibility for various decisions under the regulations.

EFFECTIVE DATE: April 26, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. J.P. Davis, Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5533.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 71 (referred to below as the regulations) contain general provisions regarding the interstate transportation of animals and animal products. On October 20, 1989, we published a proposal (54 FR 43065-43069, Docket No. 89-006) to amend the regulations regarding where swine in interstate commerce must be identified. We proposed to require that swine in interstate commerce, with certain exceptions, be identified at whichever of the following comes first: (1) The point of first commingling of the swine in interstate commerce with swine from any other source; (2) upon unloading of the swine in interstate commerce at any livestock market; (3) upon transfer of ownership of the swine in interstate commerce; or (4) upon arrival of the swine in interstate commerce at their final destination. We also proposed to make some changes to the regulations regarding the types of devices used for identification of swine.

We solicited comments concerning the proposed rule for a 60-day comment period ending December 12, 1989, and received 11 comments. Five commenters supported the proposed rule in its entirety. The remainder of the commenters recommended changes to the proposed provisions. We have carefully considered the comments submitted in response to the proposal, and discuss below the issues raised by the commenters. Based on the rationale set forth in the proposal and in this document, we have adopted the provisions of the proposal as a final rule, except for the change discussed below.

Commingling of Swine

Under our proposed rule, one of the potential points at which swine would have to be identified is the point of first commingling in interstate commerce with swine from any other source. We defined commingling as "the mixing or assembling of swine from one premises with swine from any other premises, including, but not limited to, loading swine from more than one premises on the same truck, trailer, vessel, or railroad car." According to that definition, swine from different premises would have to be identified if carried on the same truck, even if the swine are kept separate on the truck. Four commenters stated that swine from different premises on the same vehicle should not be considered as being commingled, if they are kept separate on the vehicle by means of barriers. The commenters stated that it is a common industry practice to keep slaughter hogs from different premises that are carried on the same vehicle separate, then to identify them at market. The commenters stated that the proposed provisions would in some cases unnecessarily continue to require identification to be carried out at the producer level, and that identifying swine at the producer level is more costly and less effective than identifying the animals at market.

We agree that if swine from different premises carried on the same means of conveyance are kept separate by means of barriers, there is little likelihood that the swine will become mixed before unloading. Therefore, in this final rule, we are defining commingling as follows: "The mixing or assembling of swine from one premises with swine from any other premises, including, but not limited to, loading swine from more than one premises on the same, truck, trailer, vessel, or railroad car, unless swine from different premises are kept separate on the means of conveyance by dividers."

Traceback for Genetic Improvement

One commenter recommended that we require swine to be identified at the producer level, in order to allow feedback from the packer to the producer regarding the quality of each carcass. In this way, stated the commenter, producers would better be able to assess the quality of the swine they are raising, and could better focus on improving their herds genetically. We are making no changes based on this comment. APHIS does not have the authority to establish regulations for the purpose of improving the genetic pool of a particular industry.

Miscellaneous

Five commenters requested changes to the regulations that were outside the scope of our proposed changes. Three commenters stated that it was redundant for the current Federal regulations to require identification of feeder pigs, because such pigs are already subject to State regulations. (Feeder pigs are those sent to a feedlot for an extended period of time for fattening, before being sent to slaughter.) Three commenters stated that the provision in the current regulations exempting "farrow-to-finish" swine from Federal identification requirements should be removed. (Farrow-to-finish swine are those kept in a group from birth to slaughter, without mixing with swine from any other premises.) These commenters stated that the "farrow-to-finish" exemption is contrary to standard industry procedures, is impractical, and unnecessarily complicates the regulations. Three commenters requested that the definition of "interstate commerce" in the current regulations be simplified. One commenter recommended that we prohibit the use of backtags to identify any swine moving to slaughter, and another commenter recommended that we allow tattos as an alternative form of identification for all slaughter sows and boars that are not skinned during the slaughtering process. Each of these comments addressed issues not raised in our proposed rule, and we are making no changes based on these comments. However, we will carefully review each of these comments, and will take whatever action is appropriate based on our review.

Executive Order 12291 and Regulatory Flexibility Act

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

Under the regulations, swine in interstate commerce must be identified. In many cases, under the regulations prior to the effective date of this rule, this places the responsibility for identification initially on the producer. Under this rule, swine in interstate commerce will have to be identified at whichever of the following comes first: (1) The point of first commingling of the swine in interstate commerce with swine from any other source; (2) upon unloading of the swine in interstate commerce at any livestock market; (3) upon the transfer of ownership of the swine in interstate commerce; or (4) upon arrival of the swine in interstate commerce at their final destination. Under this rule, the responsibility for identification of swine in interstate commerce at the producer's premises will in many cases be transferred to the premises of meat packing plants, selling and buying firms, and dealers.

In 1987, producers received approximately $117 per hog. Based on Government estimates, the costs of complying with identification requirements under the regulations are $.25 per animal for applying the identification and $.24–$.33 per lot of 30 animals for recordkeeping.

According to Department information, most of the hogs purchased by packing firms are purchased directly from producers. The remaining hogs are purchased at auction and terminal markets and from independent dealers. This rule will have little or no economic impact on the large majority of these entities, because packing firms and most buying and selling facilities are already equipped to apply swine identification and are already employing means of swine identification, for their own purposes, that will satisfy the requirements under this rule. No added recordkeeping will be required under the revised regulations.

The provisions in this rule concerning the types of permissible identification devices will neither increase nor decrease the cost to the public for their application.

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

Executive Order 12372

These programs/activities under 9 CFR parts 71 and 78 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given OMB control number 0579–0047.

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR parts 71 and 78 as follows:

PART 71—GENERAL PROVISIONS

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

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 71.1, the definitions of "Premises of origin", "United States Department of Agriculture swine backtag", "Veterinary Services", "Veterinary Services approved tattoo" and "Veterinary Services inspector" are removed; and new definitions of "Administrator", "Animal and Plant Health Inspection Service", "APHIS inspector", "Commingling", "Livestock market", "Official swine tattoo", and "United States Department of Agriculture backtag" are added, in alphabetical order, to read as follows:

§ 71.1 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

APHIS inspector. An inspector of the Animal and Plant Health Inspection Service.

* * * * *

Commingling. The mixing or assembling of swine from one premises with swine from any other premises, including, but not limited to, loading swine from more than one premises on the same truck, trailer, vessel, or railroad car, unless swine from different premises are kept separate on the means of conveyance by dividers.

* * * * *

Livestock market. A stockyard, buying station, concentration point, or any other premises where swine are assembled for sale or sale purposes.

* * * * *

Official swine tattoo. A tattoo, conforming to the six-character alpha-numeric National Tattoo System, that provides a unique identification for each herd or lot of swine.

* * * * *

United States Department of Agriculture backtag. A backtag issued by APHIS that conforms to the eight-character alpha-numeric National Backtagging System, and that provides unique identification for each animal.

3. In § 71.19, paragraph (a)(2) is redesignated as paragraph (a)(3); paragraph (a)(1) is revised; and new paragraph (a)(2) is added, to read as follows:

§ 71.19 Identification of swine in interstate commerce.

(a) (1) Except as provided in paragraph (c) of this section, no swine may be sold, transported, received for transportation, or offered for sale or transportation, in interstate commerce, unless they are individually identified at whichever of the following comes first:

(i) The point of first commingling of the swine in interstate commerce with swine from any other source;

(ii) Upon unloading of the swine in interstate commerce at any livestock market;

(iii) Upon transfer of ownership of the swine in interstate commerce; or

(iv) Upon arrival of the swine in interstate commerce at their final destination.

(2) The identification shall be by means of identification approved by the Administrator and listed in paragraph (b) of this section. All swine shall remain so identified while they are in interstate commerce.

* * * * *

4. In § 71.19, paragraph (b)(4) and (5) are redesignated as paragraphs (b)(5) and (6) respectively; a new paragraph (b)(4) is added; and paragraphs (b)(2) and (3), and paragraph (d), are revised, to read as follows:

§ 71.19 Identification of swine in interstate commerce.

* * * * *

(b) * * *

(2) United States Department of Agriculture backtags, when used on swine moving to slaughter;

(3) Official swine tattoos, when used on swine moving to slaughter, when the use of the official swine tattoo has been requested by a user or the State animal health official, and the Administrator authorizes its use in writing based on a determination that the tattoo will be retained and visible on the carcass of the swine after slaughter, so as to provide identification of the swine;

(4) Tattoos of at least 4-characters when used on swine moving to slaughter, except sows and boars as provided in § 78.33 of this chapter;

* * * * *

(d) Serial numbers of United States Department of Agriculture backtags and official swine tattos will be assigned to each person who applies to the State animal health official or the Area Veterinarian in Charge for the State in which that person maintains his/her or its place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or State or Federal representative who requests official eartags from the State animal health official or the Area Veterinarian in Charge, whoever is responsible for issuing official eartags in that State. Persons assigned serial numbers of United States Department of Agriculture backtags, official swine tattoos, and official eartags must:

* * * * *

§ 71.6 [Amended]

5. In § 71.6, paragraph (c), the words "the Veterinary Services" are removed, and the words "the Animal and Plant Health Inspection Service" are added in their place.

§§ 71.1, 71.6, 71.10, 71.13 [Amended]

6. In addition to the amendments set forth above, in 9 CFR part 71, the words "Veterinary Services" are removed, and the world APHIS" is added in their place in the following places:

(a) Section 71.1, definitions of "Accredited herd", "Area Veterinarian in Charge", and "Official eartag".

(b) Section 71.6, paragraph (6), both times they appear; and paragraph (c);

(c) Section 71.10, paragraph (b)(1); and

(d) Section 71.13, heading:

§§ 71.3, 71.4, 71.5, 71.6, 71.13, 71.16 [Amended]

7. In addition to the amendments set forth above, 9 CFR part 71, the words "a Veterinary Service" are removed, and the words "an APHIS" are added in their place in the following places:

(a) Section 71.3, paragraph (d), introductory text; and paragraph (d)(5);

(b) Section 71.4, paragraphs (a) and (b);

(c) Section 71.5, both times they appear;

(d) Section 71.6, paragraph (b);

(e) Section 71.13, both times they appear; and

(f) Section 71.16, paragraph (a).

§§ 71.3, 71.10, 71.18 [Amended]

8. In addition to the amendments set forth above, in 9 CFR part 71, the words "Deputy Administrator, Veterinary Services" are removed, and the word "Administrator" is added in their place in the following places:

(a) Section 71.3, paragraph (d)(6), both times they appear;

(b) Section 71.3, paragraph (e);

(c) Section 71.10, paragraphs (a)(5) and (b)(3); and

(d) Section 71.18, paragraphs (a)(1)(i) and (a)(4), both times it appears.

PART 78—BRUCELLOSIS

9. The authority citation for part 78 continues to read as follows:

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

10. In § 78.1, the terms "Animal and Plant Health Inspection Service", "Official swine tattoo", and "United States Department of Agriculture backtag" are added, in alphabetical order, to the list of terms defined in § 78.1; the definitions of "United States Department of Agriculture swine backtag" and "Veterinary Services approved tattoo" are removed; and definitions of "Animal and Plant Health Inspection Service", "Official swine tattoo", and "United States Department of Agriculture backtag" are added, in alphabetical order, to read as follows:

§ 78.1 Definitions.

The following terms are defined in this section:

* * * * *

Animal and Plant Health Inspection Service

* * * * *

Official swine tattoo

* * * * *

United States Department of Agriculture backtag

* * * * *

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

* * * * *

Official swine tattoo. A tattoo, conforming to the six-character alpha-numeric National Tattoo System, that provides a unique identification for each herd or lot of swine.

* * * * *

United States Department of Agriculture backtag. A backtag issued by APHIS that conforms to the eight-character alpha-numeric National Backtagging System, and that provides unique identification for each animal.

* * * * *

11. In § 78.33, paragraph (a)(3) is revised to read as follows:

§ 78.33 Sows and boars.

(a) * * *

(3) Individually identified by an official swine tattoo when the use of the official swine tattoo has been requested by a user or the State animal health official, and the Administrator authorizes its use in writing based on a determination that the tattoo will be retained and visible on the carcass of the swine after slaughter, so as to provide identification of the swine.

* * * * *

12. In § 78.33, paragraph (d) introductory text, is revised to read as follows:

§ 78.33 Sows and boars.

* * * * *

(d) Serial numbers of United States Department of Agriculture backtags and official swine tattoos will be assigned to each person who applies to the State animal health official or the Area Veterinarian in Charge for the State in which that person maintains his or her place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or State or Federal representative who requests official eartags from the State animal health official or the Area Veterinarian in Charge, whoever is responsible for issuing official eartags in that State. Persons assigned serial numbers of United States Department of Agriculture backtags, official swine tattoos, and official eartags:

* * * * *

Done in Washington, DC, this 21st day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-6891 Filed 3-26-90; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 97

[Docket No. 90-017]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by adding or removing commuted traveltime allowances between various locations in Arizona. Commuted traveltime allowances are the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between these locations.

EFFECTIVE DATE: March 27, 1990.

FOR FURTHER INFORMATION CONTACT: Louise R. Lothery, Director, Resource Management Support, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Veterinary Services (VS) on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding or removing commuted traveltime allowances between various locations in Arizona. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act

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

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also

find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register.**

Executive Order 12372

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

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(d).

2. Section 97.2 is amended by removing or adding in the table, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Remove:			
Arizona:			
* * * * *			
Douglas	Sierra Vista		2
* * * * *			
Nogales	Sierra Vista		2
* * * * *			
Add:			
* * * * *			
Arizona:			
* * * * *			
Douglas	Sierra Vista		3
* * * * *			
Nogales	Sierra Vista		3
* * * * *			
San Luis	Yuma		2
* * * * *			

Done in Washington, DC., this 21st day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-6890 Filed 3-26-90; 8:45 am]

BILLING CODE 3410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R-0675]

RIN 7100-AA72

Credit by Brokers and Dealers; Accommodation of Settlement and Clearance of Foreign Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting amendments to Regulation T to permit marginability of certain foreign securities and to accommodate settlement and clearance of transactions in foreign securities.

EFFECTIVE DATE: April 30, 1990.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION: The proposal to amend Regulation T to accommodate foreign securities transactions was published for public comment in the **Federal Register** on October 10, 1989 (54 FR 41454). Sixteen comments were received. All supported the Board's proposal, although there were requests for clarification or modification of specific aspects of the proposed amendments. In light of the comments received, the Board has decided to adopt the amendments as proposed with some modifications.

Foreign debt securities. The proposal to make marginable foreign debt securities that have an original issue amount of $100,000,000 if the issue is rated in one of the two highest rating categories and is not in default at the time of the extension of credit was well-received by the commenters. A definition of "foreign security" has been added in response to comments to make clear that Eurobonds issued by United States corporations are eligible on the same basis as debt securities issued by foreign corporations. A request to add another category of marginable bonds for securities issued by companies reporting under the Securities Exchange Act is not being adopted at this time in order that experience with the original proposal may be gained. The Board has also declined to adopt a lower principal amount than that originally proposed, as well as restrictions on marginability relating to the market in which the bonds trade or their salability to U.S. persons.

Foreign equity securities. The Board proposed that foreign equity securities that met certain criteria would be marginable after certification by a U.S. self-regulatory organization, such as the New York Stock Exchange, which has adopted procedures for determining eligibility under criteria adopted by the Board. The NYSE commented that it does not believe that it is appropriate for the Exchange itself to certify the eligibility of stocks for the list of foreign margin stocks. The NYSE has agreed, however, to submit a list of proposed foreign margin stocks to the Board based on certification of the securities eligibility by at least two of its members who meet certain described standards. The Board agrees with the procedures suggested by the NYSE and the amendment is being revised accordingly. These new marginable foreign equity securities, which will be designated "foreign margin stock" (rather than "world-class securities," as previously proposed) will become marginable when their names appear on a list of marginable foreign equity securities that will be published in conjunction with the Board's regular quarterly List of Marginable OTC Stocks.

Other comments concerning the proposal to make certain foreign equity securities marginable were extremely wide-ranging and showed little consensus. The Board is adopting the criteria originally proposed with one exception. The requirement that foreign margin equity securities have a tradeable float of one million shares is being deleted in light of comments asserting that it is often impossible to determine the amount of shares not held by "insiders." At the suggestion of five commenters, the phrase "foreign margin stock" is being substituted for "world-class securities."

Use of foreign currency. The Board's proposal to allow foreign-currency accounting as an alternative to the dollars-only policy that has been in place since 1934 was supported by the commenters. The use of dollars-only accounting is still available for customers who do not choose to segregate foreign-currency-denominated securities against foreign currency positions. However, an account denominated in dollars cannot hold foreign currency. One commenter sought clarification that a customer and broker could agree to use a single foreign currency in the same way as the current method. There is no reason why this could not be done. The Board also agrees with a commenter that any

currency may be deposited in the cash or margin account to effect payment for the purchase of a security denominated in another currency if foreign currency conversion is effected in the account at the same time.

Several commenters requested the use of a special memorandum account for each foreign-currency-denominated subaccount or record. Contrary advice with respect to the advisability of such action was received from a self-regulatory organization. Until experience is gained with the operation of the proposed accounts and records, action is deferred on these requests. A customer is free, however, to instruct his broker to transfer any margin excess denominated in one currency and convert it for use in another subaccount or record.

Time for payment. The proposal to tie the time period for customer payment for foreign securities purchased in the cash account to the securities settlement date was supported by all commenters, except to the extent that this rule would sometimes require payment in less than the current period in the United States. This possible shortening was criticized by almost all commenters because of operational and administrative problems. In response, the regulatory language has been amended to clarify that a broker need not cancel or liquidate any transaction if the customer makes full cash payment within seven business days.

Arranging. The proposal to amend the arranging provision of Regulation T to allow a creditor to arrange for credit to be extended by a foreign lender on non-United States securities was supported by the commenters. The phrase "non-United States securities" is being changed to "foreign securities" at the request of four commenters. This is consistent with requests for a definition of the term "foreign security." The Board is not amending the regulatory language to address the ability of creditors to arrange for the "credit" implicit in short sales and loans of securities because further study of these requests is necessary.

Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities. No comments were received on this statement.

Paperwork Reduction Act

No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Investments, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 3, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended, (15 U.S.C. 78c, 78g, 78h, 78q, and 78w) 12 CFR part 220 is amended as follows:

PART 220—CREDIT BY BROKERS AND DEALERS

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

2. In § 220.2, paragraphs (i) through (y) are redesignated as paragraphs (k) through (aa); "or" is removed at the end of newly redesignated paragraph (q)(4); the period is removed at the end of newly redesignated paragraphs (q)(5), (t)(3), and (t)(4)(iii) and "; or" is added; and new paragraphs (i), (j), (q)(6), and (t)(5) are added as to read as follows:

§ 220.2 Definitions.

* * * * *

(i) *Foreign margin stock means:*

(1) A foreign security that is an equity security and that appears on the Board's periodically published List of Foreign Margin Stocks based on information submitted by a self-regulatory organization under procedures approved by the Board; or

(2) A foreign security that is a debt security convertible into a margin security.

(j) *Foreign security* means a security issued in a jurisdiction other than the United States.

* * * * *

(q) *Margin security* * * *

(6) Any foreign margin stock.

* * * * *

(t) *OTC margin bond* * * *

(5) A foreign security that is a nonconvertible debt security that meets all of the following requirements:

(i) At the time of original issue, a principal amount of at least $100,000,000 was outstanding;

(ii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; and

(iii) At the time of the extension of credit, the issue is rated in one of the two highest rating categories by a nationally recognized statistical rating organization, except that an issue that has not been rated as of the effective date of this provision shall be considered an "OTC margin bond" if a subsequent unsecured issue of at least $100,000,000 of the same issuer is rated in one of the two highest rating categories by a nationally recognized statistical rating organization.

* * * * *

3. In § 220.4, a new sentence is added to the end of paragraph (c)(1) to read as follows:

§ 220.4 Margin account.

* * * * *

(c) *When additional margin is required—*

(1) *Computing deficiency.* * * * To the extent that debits in a margin account are denominated in foreign currency secured by specifically identified foreign margin securities as provided in § 220.5(g), each foreign currency debit position shall be considered separately for purposes of computing a deficiency and no credit shall be given to such specifically identified foreign margin securities for purposes of computing equity in the margin account either in United States dollars or in any other specific foreign currency.

* * * * *

4. In § 220.5, a new paragraph (g) is added to read as follows:

§ 220.5 Margin account exceptions and special provisions.

* * * * *

(g) *Credit denominated in foreign currency.* A creditor may extend credit denominated in a foreign currency secured by foreign margin securities denominated or traded in the same foreign currency and specifically identified on the creditor's books and records as securing the foreign currency debit.

5. In § 220.8, paragraph (b)(1) introductory text is revised; paragraphs (b)(1)(i) through (iv) are redesignated as shown below:

Old Paragraph Designation	New Paragraph Designation
(i)	(A)
(ii)	(B)
(iii)	(C)
(iv)	(D)
(A)	(*1*)
(B)	(*2*)
(C)	(*3*)

and new paragraphs (b)(1)(i) and (b)(1)(ii) are added to read as follows:

§ 220.8 Cash account.

* * * * *

(b) *Time periods for payment; cancellation or liquidation—*

(1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases—

(i) Within seven business days of the date:

* * * * *

(ii) In the case of the purchase of a foreign security, within seven business days of the trade date or the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

* * * * *

6. In § 220.13, "or" is removed at the end of paragraphs (a) and (b); the period is removed at the end of paragraph (c) and "; or" is added; and new paragraph (d) is added to read as follows:

§ 220.13 Arranging for loans by others.

* * * * *

(d) Credit extended by a foreign person to purchase foreign securities.

7. In § 220.17, the section heading and the headings to paragraphs (a) and (b) are revised; the reference to paragraph (d) in paragraphs (a) and (b) is changed to read paragraph (f); paragraphs (c), (d), and (e) are redesignated as paragraphs (e), (f), and (g) and revised; and new paragraphs (c) and (d) are added to read as follows:

§ 220.17 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.

(a) *Requirements for inclusion on the list of marginable OTC stocks.*

* * * * *

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.*

* * * * *

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign margin stock shall meet the following requirements:

(1) The security is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

(2) Daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $1 billion;

(4) The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or $1 million; and

(5) The issuer or a predecessor in interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign margin stock shall meet the following requirements:

(1) The security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $500 million; and

(3) The average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or $500,000.

(e) *Removal from the lists.* The Board shall periodically remove from the lists any stock that:

(1) Ceases to exist or of which the issuer ceases to exist, or

(2) No longer substantially meets the provisions of paragraphs (b) or (d) of this section or § 220.2(u).

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the list of marginable OTC stocks and the list of foreign margin stocks and equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

8. In § 220.18, the phrase "or the percentage set by the regulatory authority where the trade occurs, whichever is greater" is added before the period at the end of paragraphs (a) and (b).

By order of the Board of Governors of the Federal Reserve System, March 21, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-6847 Filed 3-26-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 357

RIN 3064-AB08

Determination Of Economically Depressed Regions

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

ACTION: Interim Rule with Request for Comments.

SUMMARY: This interim rule identifies those geographical regions which the FDIC has determined to be "economically depressed regions" for purposes related to FDIC assistance for certain troubled thrift institutions prior to the appointment of a receiver or conservator. The FDIC is required by law to consider proposals for direct financial assistance by Savings Association Insurance Fund member institutions whose offices are located in an economically depressed region and which satisfy certain other specified criteria. The interim rule is effective March 27, 1990, in order that the FDIC may implement its policy of open thrift assistance without further delay; however, the public is invited to comment on the determination of economically depressed regions set forth in the interim rule, and changes to the determination set forth in the interim rule may be made as a result of the comments received.

DATES: The interim rule is effective March 27, 1990. Comments must be submitted by May 29, 1990.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to Room 6097 on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898-3838).

FOR FURTHER INFORMATION CONTACT: Arthur Murton, Chief, Financial and Industry Analysis Section, Division of Research and Statistics, (202) 898-3938; Daniel M. Gautsch, Chief, Assistance Transactions Section, Division of Supervision, (202) 898-6912; Christine M. Svevar, Legal Division, (202) 898-3727; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork

Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this interim rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the interim rule would not have a significant impact on a substantial number of small entities.

Discussion of the Interim Rule

The FDIC has authority under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) to provide financial assistance to prevent the default of an insured depository institution. Under section 13(k)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(5)), the FDIC must consider proposals for assistance pursuant to section 13(c) for eligible Savings Association Insurance Fund ("SAIF") member institutions before grounds exist for the appointment of a conservator or receiver for the institution. Section 13(k)(5) contains nine criteria for eligibility. One of the criteria is that an institution's offices are located in an economically depressed region. The term "economically depressed region" is defined in section 13(k)(5)(C) to mean "any geographical region which the [FDIC] determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices." Thus, the FDIC is given authority to determine which geographical regions meet the statutory standard.

In determining which regions are economically depressed, the FDIC will consider the following factors: (1) The ratio of poor quality real estate assets to total assets in the portfolios of banks; (2) the ratio of poor quality real estate assets to total assets in the portfolios of thrifts; and (3) unemployment figures. Statewide percentages of impaired real estate assets for banks and thrifts and unemployment rates will be analyzed with reference to national levels. The FDIC may analyze other factors which indicate decreased real estate values or severe economic conditions in its determination of economically depressed regions for the purposes of providing assistance to certain thrift institutions. In light of changing local economic conditions, these factors are subject to periodic review and reasonable application by the FDIC.

Having applied the factors described above, the FDIC has designated eight states as "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act. They are: Alaska, Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

Reason for Interim Rule

There is an urgent need for the FDIC to finalize and implement its policy relating to financial assistance for operating thrifts. A key element of this policy is the determination, by regulation, of those regions which are economically depressed within the meaning of section 13(k)(5).

For this reason, the FDIC Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the Board desires to have the benefit of public comment before adoption of a final rule on this subject, and so invites interested persons to submit comments during a 60-day comment period. In adopting a final regulation, the Board will make such revisions in the interim rule as may be appropriate based on the comments received.

Request for Public Comment

The FDIC hereby requests comment on all aspects of the interim rule. In particular, the FDIC invites comment on the following specific issues:

1. The interim rule designates eight different states as economically depressed regions. Should "region" be subject to a smaller or larger geographical demarcation? If so, on what basis?

2. The FDIC has applied certain economic factors, such as indicators of decreased real estate values and unemployment rates, in its determination of economically depressed regions. Should the FDIC consider other factors in its determination? If so, what are the appropriate factors which would indicate that a region is economically depressed?

List of Subjects in 12 CFR Part 357

Bank deposit insurance, Savings associations.

For the reasons set out in the preamble, new part 357 is added to title 12, chapter III, subchapter B of the Code of Federal Regulations to read as follows:

PART 357—DETERMINATION OF ECONOMICALLY DEPRESSED REGIONS

Authority: 12 U.S.C. 1823(k)(5); 12 U.S.C. 1819.

§ 357.1 Economically depressed regions.

(a) *Purpose.* Section 13(k)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(5)) provides that the FDIC shall consider proposals for financial assistance for eligible Savings Association Insurance Fund members before grounds exist for appointment of a conservator or receiver for such member. One of the criteria for eligibility is that an institution's offices are located in an economically depressed region as determined by the FDIC.

(b) *Economically depressed regions.* The FDIC has determined that the following geographical regions are "economically depressed regions" for purposes of section 13(k)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(5)): Alaska, Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma and Texas.

By order of the Board of Directors. Dated at Washington, DC this 20th day of March 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–6844 Filed 3–26–90; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–33–AD; Amdt. 39–6556]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection for cracks in the fuselage station 2598 upper bulkhead, which supports the horizontal stabilizer; repair, if necessary; and reporting of inspection findings. This amendment is prompted by a report of three cracks in an upper bulkhead web. This condition, if not corrected, could lead to loss of the horizontal stabilizer.

EFFECTIVE DATE: April 13, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: One operator recently reported finding three cracks in the fuselage station 2598 upper bulkhead of a Boeing Model 747 airplane. The longest crack was approximately 9.8 inches long. The FAA has attributed a portion of this crack to fatigue, with the remaining portion attributable to static failure. The fuselage station 2598 upper bulkhead supports the horizontal stabilizer. Such cracking in this area, if not corrected, could lead to loss of the horizontal stabilizer. Airplanes line numbers 001 and 227 and subsequent have a different bulkhead configuration, and are not subject to this fatigue cracking.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2332, dated March 8, 1990, which describes procedures for visual and eddy current inspections to detect cracks in the bulkhead, repairs, and a terminating modification comprised of the addition of doublers that strengthen the bulkhead.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection for cracks of the fuselage station 2598 upper bulkhead, and repair, if necessary, in accordance with the service bulletin previously described. Additionally, operators are required to submit a report of their inspection findings to the FAA. This AD action also provides for an optional modification which, if installed, would constitute terminating action for the repetitive inspections. The FAA is considering further rulemaking which would make this terminating modification mandatory.

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.

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

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures 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 action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line numbers 002 through 226, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the horizontal stabilizer, accomplish the following:

A. Within the next 30 days after the effective date of this AD, perform either a close detailed visual inspection or a high frequency eddy current (HFEC) inspection of the fuselage station 2598 bulkhead upper web in the corners of the access cut-out, in accordance with Boeing Alert Service Bulletin 747–53A2332, dated March 8, 1990. Repeat these inspections as follows:

1. If the immediately preceding inspection was accomplished visually, the next inspection must be conducted within 250 landings.

2. If the immediately preceding inspection was accomplished using HFEC, the next inspection must be conducted within 1,000 landings.

B. If cracks less than 1.5 inches are found, repair prior to further flight, in accordance with repair procedures defined in Boeing Alert Service Bulletin 747–53A2332, dated March 8, 1990; or accomplish the terminating modification specified in paragraph E., below. Inspect repairs for cracks in accordance with paragraph A., above, until the terminating modification specified in paragraph E., below, is accomplished.

C. If cracks are found that are 1.5 inches or longer, modify prior to further flight, by installing the terminating modification specified in paragraph E., below.

D. Within the next 30 days after the effective date of this AD, remove the fastener common to the web and the tab on the vertical stiffener at each corner of the upper bulkhead cut-out, and perform a high frequency eddy current inspection of the open hole, in accordance with Boeing Alert Service Bulletin 747–53A2332, dated March 8, 1990. If no cracks are found, replace the fastener with a 1/16-inch oversized equivalent fastener. If any cracks are found, prior to further flight, accomplish the repair and inspections required by paragraph B., above, or modify prior to further flight in accordance with the terminating modification specified in paragraph E., below.

E. Installation of the terminating modification in accordance with Boeing Alert Service Bulletin 747–53A2332, dated March 8, 1990, constitutes terminating action for the requirements of this AD.

F. Within 10 days after completion of the inspections required by paragraph A., above, submit a report of positive findings of cracks on airplanes to the Manager, Seattle Aircraft Certification Office, ANM–100S, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The report must include the line number of the airplane inspected, the number of flight cycles, the number of flight hours, the size and location of the cracks, and the method of repair.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or

comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 13, 1990.

Issued in Seattle, Washington, on March 19, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-6858 Filed 3-26-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-80-AD; Amendment 39-6557]

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC-8, DC-9 (Includes MD-80 Series), and DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the effective date of an existing airworthiness directive (AD) applicable to certain transport category airplanes certificated for operation with a main deck Class B cargo compartment, which requires that certain operational and equipment changes and design modifications be accomplished to provide an acceptable level of fire protection. This amendment changes the effective date of the AD to provide additional time necessary to develop the design changes and "firefighter" training programs required by the existing AD.

EFFECTIVE DATE: May 3, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Kurle (Boeing airplanes) Systems & Equipment Branch, ANM-130S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-1576; or Mr. Kevin Kuniyoshi (McDonnell Douglas airplanes), Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806, telephone (213) 988-5337.

SUPPLEMENTARY INFORMATION: On August 10, 1989, the FAA issued AD 89-18-12, Amendment 39-6301 (54 FR 34762; August 21, 1989), applicable to Boeing Models 707, 727, 737, 747, and 757 series airplanes, and McDonnell Douglas Models DC-8, DC-9 (includes MD-80 series), and DC-10 series airplanes, which requires (1) modification of all Class B cargo compartments to Class C cargo compartments, or (2) the use of flame penetration-resistant cargo containers equipped with smoke detection and fire extinguishing systems, or (3) use of individuals trained to fight cargo fires and certain modifications to Class B cargo compartments and associated systems. The amendment was prompted by an FAA evaluation following the loss of a Boeing Model 747-200 "Combi" airplane that developed a major fire in the main deck cargo compartment. That condition, if not corrected, could result in an uncontrolled cargo fire that could cause systems and structural damage, leading to the loss of the airplane.

The FAA provided an opportunity for interested persons to comment on the Final Rule. Due consideration has been given to the comments received. Commenters included numerous manufacturers, airlines, crew unions, consumer advocates, and foreign airworthiness authorities.

Some commenters stated that not enough technical/research data is available either to substantiate that an unsafe condition exists or to determine a consummate design modification to address the unsafe condition; these commenters suggested that the rule be withdrawn. The FAA disagrees. As explained and discussed in detail in both the Notice and the preamble to the Final Rule, the evidence of a major fire in the referenced accident prompted the FAA to appoint an inter-disciplinary team to conduct an evaluation of transport airplane main deck Class B cargo compartment fire protection. The team's evaluation addressed not just the Model 747, but all transport airplanes equipped with Class B cargo compartments, and concluded that, in a number of respects, existing regulations were inadequate and existing designs provided an unacceptable level of safety in terms of smoke and fire protection. The commenters submitted no additional data or analysis in support of their suggestions that would counter the FAA's determination.

Some commenters indicated that required in-flight fire inspections accomplished by an individual trained to fight cargo fires ("firefighter") are arbitrary, penalizing, difficult to accomplish since "firefighters" would not be able to stay alert on long flights, and impossible to accomplish in certain conditions (such as turbulence). They suggested that the requirement for a trained "firefighter" be deleted. The FAA does not agree. The intent of the periodic inspection is to detect incipient fires (especially those producing little or no smoke), and to detect leakage or movement of cargo. By being required to perform periodic inspections, the "firefighter" will focus on his/her primary duty and is less likely to be distracted with additional duties that would prevent accomplishment of these inspections. The thirty minute time period provides a high probability of detection while allowing the "firefighter" a reasonable time between inspections to accomplish some additional tasks.

Some commenters suggested that the inspection intervals be tied to specific events, such as takeoffs, landings, and following turbulence. The FAA recognizes that certain conditions may preclude a thirty minute inspection; however, as soon as the condition improves to the point that an inspection can be made, the inspection should be accomplished. There is nothing in the rule prohibiting additional inspections keyed to takeoffs and landings or after turbulence.

Several commenters suggested that an approved thirty minute oxygen supply, as required for the trained "firefighter," is not yet available and may be hard to acquire within the compliance time of one year. The FAA maintains that the required thirty minute supply of oxygen does not have to be one continuous thirty minute supply. Use of two currently available and approved fifteen minute oxygen supplies will meet the intent of the requirement.

One commenter inquired if the thirty minute protective breathing was also required for the second "firefighter" and questioned the meaning of "an additional quantity of oxygen" required by paragraph A.2.b. of the AD. The thirty minute supply of oxygen is also required for the second "firefighter" on airplanes having compartments with more than 200 square feet of cargo/baggage floor area. The additional quantity of oxygen required by

paragraph A.2.b. of the AD refers to oxygen required by the "firefighter" to conduct continuous visual inspections throughout the Class B cargo compartment following a smoke alarm and until the airplane is landed as required by paragraph A.1.c. of the AD. The additional quantity is directly related to the flight time to a suitable diversion airport for landing.

One commenter suggested that, if more than the minimum number of cabin crewmembers required by operating rules are present, a cabin crewmember could serve as the required "firefighter." The FAA concurs. If more than the minimum number of cabin crewmembers required by the operating rules are present, a cabin crewmember, trained in cargo firefighting techniques, may be appointed as the trained "firefighter" required by the AD.

Many commenters indicated that firefighting training requirements need to be more clearly defined and that the AD does not provide enough time to institute a training program within the required compliance period. Some commenters also suggested subjects to be included in the training curriculum. Upon reconsideration, the FAA agrees that one year from the effective date of the existing AD, September 25, 1989, is insufficient time to implement a fire training program, since training guidance has not yet been fully developed and released. The FAA (in conjunction with the Joint Airworthiness Authority countries of Europe) is in the process of identifying appropriate training subject areas and is developing guidance regarding cargo "firefighter" training programs. The FAA plans to make that information available to affected operators as soon as possible after it is formulated. In light of this, the FAA has revised the effective date of the AD to coincide with the effective date of this amendment, thereby providing additional time to develop "firefighter" training programs. In accordance with paragraph D. of the AD, the FAA will consider further extensions of the compliance time, when necessary, if justification is provided.

Some commenters indicated that use of full cargo compartment flame penetration-resistant liners (including ceiling) provides little increase in safety after other required improvements have been made and that they could hamper firefighting efforts by reducing the accessibility by the "firefighter" to the top of the cargo containers/pallets. The FAA disagrees. In the absence of flame penetration-resistant containers, cargo compartment liners delay burn-through of insulation and airplane skin, allowing fire extinguishant in the compartment to remain at an effective concentration for a longer time. In addition, the liner will prevent or minimize damage to essential structure and systems.

Some commenters suggested that the compliance time for paragraph B. be extended from 3 years after the effective date of the AD to 3 years (or more) after availability of retrofit kits. The FAA concurs in part with this comment. The compliance time of 3 years for accomplishing the retrofit was developed based on data available to the FAA, at the time the AD was prepared, and represents what was determined to be the maximum interval of time allowable wherein the modifications could reasonably be accomplished and an acceptable level of safety could be maintained. However, it is not the FAA's intent to ground Class B cargo operations because compliance time requirements cannot be reasonably met. It now appears that availability of portions of the retrofit kits may require additional time. Therefore, the FAA has revised the effective date of the AD to coincide with the effective date of this amendment, thereby providing additional time for obtaining and installing the required modification parts. The FAA will continue to monitor the availability of retrofit kits and, if it becomes evident that the 3 year compliance time cannot be met, will review requests for compliance time extensions and take appropriate action.

A few commenters recommended that the manufacturers, not the operators, should accomplish the required flight test demonstrations. The FAA notes that the AD does not require that operators accomplish the flight testing; it is acceptable that testing of design changes be accomplished by manufacturers or modifiers of the aircraft.

Several commenters indicated that the AD was overly restrictive for narrow body airplanes operating on short trips into remote areas. These operations are often characterized by small containers, small numbers of containers, forward cargo compartments with frequent foot travel by crewmembers through the cargo compartment, and a need to quickly change the cargo compartment configuration. The FAA recognizes that these are operational considerations. As discussed in the preamble to the AD, cargo fires can easily reach dangerous proportions in any size compartment; however, it is not the FAA's intent to eliminate or overly restrict narrow body Class B cargo operations. The FAA will review proposals for alternate means of compliance with this AD, as provided by paragraph D. of the rule.

Some commenters suggested that the requirement of paragraph B.3.f. (providing illumination in the cargo compartment) be defined in terms of a clear air environment, since the environment encountered after fire and discharge of the fire extinguishant is not well defined. Other commenters questioned the need for access pathway illumination [as required by paragraph B.3.f(2)] and suggested access path illumination be required only in an emergency. The FAA disagrees with both suggestions. Clear air is not the correct environment for specifying illumination that must be effective in a fire or fire extinguishant environment. Visibility conditions likely to be encountered after a fire and the discharge of the fire extinguishant will vary with airplane type and with the amount of air flowing through the cargo area. It is, therefore, impossible to specify a test condition applicable to every "combi" configured airplane. Further, access path illumination is necessary for safe passage by the "firefighter" during the required periodic inspections, as well as when fighting fires. Pathways can become partially blocked by loose cargo or equipment during flight even with no fire, thus presenting hazards in a poorly lighted environment. Again, the FAA will review proposals for alternate means of compliance with this requirement, as provided by paragraph D.

One commenter inquired if the AD applied to airplanes in an all-cargo configuration (no passengers). The AD applies to all listed transport category airplanes certificated for operation with a main deck Class B cargo compartment whether or not passengers are aboard the airplane.

Several commenters suggested that the amount of fire extinguishant (48 pounds) and water (2½ gallons) in portable fire extinguishers required by paragraphs A.2.c. and A.2.d. of the AD appears to be excessive for narrow body airplanes with smaller cargo compartments. They indicated that the required amounts appear to be derived from requirements of wide body airplanes with larger cargo compartments. The FAA does not concur. The intensity and size of cargo fires is often independent of the size of the cargo compartment. The amount of fire extinguishant required by the AD is derived from that required in cargo compartments found on the Boeing Model 757, which the FAA considers to be an average size in relation to all the affected aircraft. The amount is meant

to provide sufficient extinguishant to successfully fight stubborn, deep-seated fires, regardless of compartment size.

Some commenters questioned the requirements for two-way communication between the "firefighter's" station and the flight deck, and between the interior of the cargo compartment and the flight deck, as specified in paragraph A.2.e. of the AD. Some commenters indicated that two-way communication was not necessarily needed on narrow body airplanes when the cargo compartment is located immediately aft of the flight deck, since the door between the two areas could be opened for easy communication. The FAA does not concur. In the presence of smoke and fumes from a fire, the door to the flight deck should not be opened. Other commenters inquired if the currently available interphones meet the intent of the requirement or if a capability for continuous two-way communication from anywhere in the cargo compartment to the flight deck is required. The FAA does not consider that the currently available interphones meet the intent of the AD. If they are located at the "firefighter's" station and in appropriate locations in the cargo compartment, they may be acceptable for compliance with paragraph A. of the AD); however, the preferred solution is to provide a portable wireless two-way communication system allowing continuous communication between the "firefighter(s)" and the flight crew.

One commenter expressed concern that unsafe conditions which exist for the airplane types listed in the AD can exist in all airplane models certificated for operation with a main deck Class B cargo compartment. The commenter requested that the FAA review main deck Class B cargo compartment certification of all airplane types and issue additional appropriate AD's. The FAA agrees that airplane models other than those listed in the AD could be affected and is currently preparing similar rulemaking actions to address other airplane models operating with main deck Class B cargo compartments.

Some commenters suggested that the flight engineer should be allowed to conduct the initial visual inspection required by paragraph A.1.b. of the AD. Some also recommended that the term "flight attendant" in paragraph A.1.d. of the AD be changed to "crewmember" to allow the flight engineer to be designated and trained as the second "firefighter" required in paragraph A.1.d. of the AD. The FAA is willing to review proposals for alternate means of compliance to allow the flight engineer to conduct the initial visual inspection required by paragraph A.1.b. of the AD. The FAA does not concur that the flight engineer should be one of the designated and trained "firefighters," since his/her primary duties would interfere with fire fighting duties in the event of a cargo fire emergency.

Some commenters proposed various operational considerations which may improve main deck Class B cargo compartment safety. These included improved maintenance inspections, alternate cargo arrangements, improved cargo handling techniques, and alternate sources of water for fire fighting purposes. Again, the FAA recognizes that these are operational considerations or alternate means of compliance and will review proposals for alternate means of compliance as provided by paragraph D. of the AD.

Paragraph D. of the final rule has been revised to clarify that applications for alternate means of compliance pertaining to McDonnell Douglas series airplanes must be submitted to the Manager of the Los Angeles Aircraft Certification Office.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of this amendment to revise the effective date of the current rule, thereby providing additional time necessary for the accomplishment of the required actions, and to revise paragraph D., as explained above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 278 Boeing Model 707, 727, 737, 747, and 757 Model series airplanes and 124 McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that approximately 80 U.S.-registered Boeing Model 707, 727, 737, 747 and 757 series airplanes, and 124 U.S.-registered McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes, of U.S. registry, have been certified to operate with a Class B main deck cargo compartment. Many of these airplanes have been permanently operated in the all-passenger configuration and are, therefore, not affected by this rule. Approximately 40 of these airplanes are presently operated by U.S. operators in the mixed cargo/passenger configuration. Since this amendment to the existing AD only changes the effective date of the AD, their is no cost impact on U.S. operators.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by amending the effective date of Amendment 39-3601 (54 FR 34762; August 21, 1989), AD 89-18-12, from September 25, 1989, to the effective date of this amendment; and by revising paragraph D., as follows:

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (for Boeing series airplanes); or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas series airplanes).

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager of the Seattle Aircraft Certification Office or to

the Manager of the Los Angeles Aircraft Certification Office, as appropriate.

This amendment amends Amendment 39–6301, AD 89–18–12.

This amendment becomes effective May 3, 1990.

Issued in Seattle, Washington, on March 19, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–6859 Filed 3–26–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26166; Amdt. No. 1422]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* This amendment to part 97 is effective on March 27, 1990. An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on March 27, 1990 and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on March 16, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective July 26, 1990

Brazil, IN—Brazil Clay County, VOR RWY 9, Amdt. 6.

. . . Effective May 31, 1990

Houston, TX—Andrau Airpark, NDB RWY 16, Amdt. 15.

Seattle, WA—Boeing Field/King County Intl, NDB-A, Amdt. 7, CANCELLED.

. . . Effective May 3, 1990

Alabaster, AL—Shelby County, NDB RWY 33, Orig.

Greensboro, GA—Greene County Airpark, NDB-A, Orig.

Litchfield, IL—Litchfield Muni, NDB RWY 9, Amdt. 4.

Litchfield, IL—Litchfield Muni, NDB RWY 27, Amdt. 6.

Frankfort, IN—Frankfort Muni, NDB RWY 4, Amdt. 4.

Pellston, MI—Pellston Regional Airport of Emmet County, VOR/DME RWY 5, Amdt. 9.

Pellston, MI—Pellston Regional Airport of Emmet County, VOR RWY 23, Amdt. 14.

Pellston, MI—Pellston Regional Airport of Emmet County, ILS RWY 32, Amdt. 9.

Minneapolis, MN—Minneapolis-St. Paul Intl/Wold Chamberlain, RADAR-1, Amdt. 30, CANCELLED.

Drew, MS—Ruleville-Drew, VOR-A, Amdt. 4.

Wilmington, NC—New Hanover County, NDB RWY 34, Amdt. 16.

Jasper, TN—Marion County-Brown Field, NDB RWY 4, Amdt. 3.

Conroe, TX—Montgomery County, LOC RWY 14, Orig.

Fort Worth, TX—Fort Worth Alliance, ILS RWY 34, Orig.

Galveston, TX—Scholes Field, VOR RWY 13, Amdt. 1.

Galveston, TX—Scholes Field, ILS RWY 13, Amdt. 7.

Sparta, WI—Sparta/Fort McCoy, NDB RWY 29, Orig.

. . . Effective April 5, 1990

Cahokia/St. Louis, IL—St. Louis Downtown-Parks, NDB RWY 30L, Amdt. 16.

. . . Effective March 12, 1990

Juneau, AK—Juneau Intl, NDB-1 RWY 8, Amdt. 9.

. . . Effective March 9, 1990

Anchorage, AK—Anchorage Intl, ILS RWY 6R, Amdt. 9.

Fairbanks, AK—Fairbanks Intl, ILS RWY 1L, Amdt. 6.

. . . Effective March 8, 1990

Springfield, MO—Springfield Regional, VOR RWY 20, Amdt. 16.

Springfield, MO—Springfield Regional, NDB RWY 2, Amdt. 16.

. . . Effective March 7, 1990

Boonville, MO—Jesse Viertel Memorial, VOR-A, Amdt. 3.

Boonville, MO—Jesse Viertel Memorial, NDB RWY 18, Amdt. 8.

. . . Effective March 5, 1990

Cahokia/St. Louis, IL—St. Louis Downtown-Parks, ILS RWY 30L, Amdt. 5.

. . . Effective February 5, 1990

Ottawa, OH—Putnam County, NDB RWY 27, Amdt. 1.

[FR Doc. 90-6747 Filed 3-26-90; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6858; 34-27817; 35-25057; 39-2237; IC-17386; IA-1224]

Amendment of Rules Concerning Delegations of Authority to the Director, Office of Applications and Reports Services and the Director, Division of Corporation Finance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") is amending its rules relating to organization and program management. The amendment delegates authority to the Director, Office of Applications and Reports Services ("OARS"), to authenticate Commission documents. The amendment also deletes from the delegation of authority to the Director, Division of Corporation Finance, functions for which divisions other than the Division of Corporation Finance are responsible.

EFFECTIVE DATE: March 27, 1990.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott, Assistant General Counsel ((202) 272-2474) or Kimberly Warren, Staff Attorney ((202) 272-3610), Securities and Exchange Commission, Office of the General Counsel (Stop 6-6), 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission's delegation of authority to the Director, OARS, 17 CFR 200.30-11, does not specifically include document authentication, although the organizational provision of the Commission's regulations applicable to OARS, 17 CFR 200.20c, provides, in pertinent part, that "the Office is responsible * * * for authenticating all documents produced for administrative or judicial proceedings * * *." OARS has been carrying out that function consistent with the intent of 17 CFR 200.20c. In order to comply with delegation requirements and to ensure the continued and expeditious handling of requests for authentication of Commission documents, the Commission is amending 17 CFR 200.30-11 to delegate expressly to the Director, OARS, authority to authenticate Commission documents.

The Commission's delegation of authority to the Director of the Division of Corporation Finance, 17 CFR 200.30-1, includes authority for certain functions (set forth in paragraphs (g) and (h)). These functions include the designation of officers empowered to administer oaths, subpoena witnesses, take evidence and require production of documents in the course of an examination or investigation, and the grant of requests by persons for copies of the transcripts of their testimony in nonpublic investigatory proceedings. However, these functions actually are performed by other divisions pursuant to their delegations of authority, and not by the Division of Corporation Finance. Therefore, this amendment deletes paragraphs (g) and (h) from 17 CFR 200.30-1 and redesignates paragraph (i) to become (g) and paragraph (j) to become (h).

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act, that this amendment relates solely to agency organization, procedure or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are not necessary, nor is it necessary to publish the amendment thirty days prior to its effective date.

Text of Amendment

List of Subjects in 17 CFR Part 200

Administrative practice and procedure; Authority delegations; Organization and functions.

The Commission hereby amends chapter II, title 17, of the Code of Federal Regulations as follows:

PART 200 —ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 subpart A is revised as follows:

Authority: Secs. 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; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

Section 200.30–11 is also issued under 15 U.S.C. 78d–1, 78d–2.

§ 200.30–1 [Amended]

2. Section 200.30–1 is amended by removing paragraphs (g) and (h) and redesignating paragraph (i) to become paragraph (g) and paragraph (j) to become paragraph (h).

3. Section 200.30–11 is amended by adding paragraph (e) as follows:

§ 200.30–11 Delegation of authority to Director, Office of Applications and Reports Services.

* * * * *

(e) To authenticate all Commission documents produced for administrative or judicial proceedings.

By the Commission.

Dated: March 19, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–6835 Filed 3–26–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803, 807, 812, 813, 814, 820, and 860

Medical Device Regulations; Address Changes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its regulations on medical devices to update mailing addresses of certain organizational units. FDA is also amending its premarket notification regulations for medical devices to clarify that certain submissions are to be made to FDA's Center for Biologics Evaluation and Research (CBER) instead of FDA's Center for Devices and Radiological Health (CDRH).

EFFECTIVE DATE: March 27, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Land, Rockville, MD 20857, 301–443–4874.

SUPLEMENTARY INFORMATION: In the **Federal Register** of September 8, 1989 (54 FR 37377), FDA announced that the Office of Device Evaluation (ODE), CDRH had completed the move from its former Silver Spring, MD 20910, location to Rockville, MD 20850. As a result, FDA is amending certain medical device regulations to update mailing addresses. The affected regulations are 21 CFR 803.33(b), 807.22(a), 807.37(a) and (b)(2), 807.90(a), 812.19, 813.20(a), 814.20(h), 820.1(d), and 860.123(b)(1).

FDA is also revising § 807.90(a) to clarify the mailing address for certain submissions for medical devices regulated by CBER. These devices are identified in a document entitled "Working Relationships Agreement Among the Bureaus of Medical Devices (BMD), Radiological Health (BRH), Biologics (BOB)" made available by FDA on April 9, 1982 (47 FR 15412). Since this working relationships' document was made available, BMD and BRH have been merged as CDRH. The responsibility for regulating certain devices under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 210 *et seq.*) was assigned to the Bureau of Biologics, now CBER.

The following devices are regulated by CBER.

Section	Regulation name
864.9050	Blood bank supplies.
864.9100	Empty container for the collection and processing of blood and blood components.
864.9125	Vacuum-assisted blood collection system.
864.9145	Processing system for frozen blood.
864.9160	Blood grouping substances of nonhuman origin for in vitro diagnostic use.
864.9175	Automated blood grouping and antibody test system.
864.9185	Blood grouping view box.
864.9195	Blood mixing devices and blood weighing devices.
864.9205	Blood and plasma warming device.
864.9225	Cell-freezing apparatus and reagents for in vitro diagnostic use.
864.9245	Automaticed blood cell separator.
864.9275	Blood bank centrifuge for in vitro diagnostic use.
864.9285	Automated cell-washing centrifuge for immuno-hematology.
864.9300	Automated Coombs test system.
864.9320	Cooper sulfate solution for specific gravity determinations.
864.9400	Stabilized enzyme solution.
864.9550	Lectins and protectins.
864.9575	Environmental chamber for storage of platelet concentrate.
864.9600	Potentiating media for in vitro diagnostic use.
864.9650	Quality control kit for blood banking reagents.
864.9700	Blood storage refrigerator and blood storage freezer.
864.9750	Heat-sealing device.
864.9875	Transfer set.

Because these amendments are nonsubstantive, notice and public procedure and delayed effective date are unnecessary.

List of Subjects

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 813

Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Radiation Control for Health and Safety Act of 1968, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 803, 807, 812, 813, 814, 820, and 860 are amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: Secs. 502, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 371, 374).

§ 803.33 [Amended]

2. Section 803.33 *Where to submit a report* is amended in paragraph (b) by removing "(HFZ–343)" and replacing it

with "(HFZ–351)" and by removing "8757 Georgia Ave., Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS OF DEVICES

3. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 371, 374).

§ 807.22 [Amended]

4. Section 807.22 *How and where to register establishments and list devices* is amended in paragraph (a) by removing "8757 Georgia Avenue, Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

§ 807.37 [Amended]

5. Section 807.37 *Inspection of establishment registration and device listings* is amended in paragraphs (a) and (b)(2) by removing "8757 Georgia Avenue, Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

6. Section 807.90 is amended by revising paragraph (a) to read as follows:

§ 807.90 Format of a premarket notification submission.

* * * * *

(a) (1) For devices regulated by the Center for Devices and Radiological Health, be addressed to the Food and Drug Administration, Center for Devices and Radiological Health (HFZ–401), 1390 Piccard Dr., Rockville, MD 20850.

(2) For devices regulated by the Center for Biologics Evaluation and Research, be addressed to the Food and Drug Administration, Center for Biologics Evaluation and Research, Division of Product Certification (HFB–240), 8800 Rockville Pike, Bethesda, MD 20892.

(3) All inquiries regarding a premarket notification submission should be in writing and sent to one of the addresses above.

* * * * *

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

7. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 376, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

§ 812.19 [Amended]

8. Section 812.19 *Address for IDE correspondence* is amended by removing "8757 Georgia Ave., Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

PART 813—INVESTIGATIONAL EXEMPTIONS FOR INTRAOCULAR LENSES

9. The authority citation for 21 CFR part 813 continues to read as follows:

Authority: Secs. 301, 501, 502, 520, 701, 704, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360j, 371, 374, 381).

§ 813.20 [Amended]

10. Section 813.20 *Application* is amended in paragraph (a) by removing "8757 Georgia Ave., Silver Spring, Md. 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

11. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: Secs. 501, 502, 503, 510, 513–520, 701, 702, 703, 704, 705, 706, 708, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379, 381).

§ 814.20 [Amended]

12. Section 814.20 *Application* is amended in paragraph (h) by removing "8757 Georgia Ave., Silver Spring, MD 20910" and replacing it with "1390 Piccard Dr., Rockville, MD 20850".

PART 820—GOOD MANUFACTURING PRACTICE FOR MEDICAL DEVICES: GENERAL

13. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: Secs. 501, 502, 515, 518, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e, 360h, 360i, 360j, 371, 374).

§ 820.1 [Amended]

14. Section 820.1 *Scope* is amended in paragraph (d) by removing "8757 Georgia Ave., Silver Spring, MD 20910; telephone 301–427–7194" and replacing it with "1390 Piccard Dr., Rockville, MD 20850; telephone 301–427–1128".

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

15. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: Secs. 513, 514, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374).

§ 860.123 [Amended]

16. Section 860.123 *Reclassification petition: Content and form* is amended in paragraph (b)(1) by removing "Document Mail Center (HFZ–401), 8757 Georgia Avenue, Silver Spring, Md. 20910" and replacing it with "Office of Standards and Regulations (HFZ–84), 5600 Fishers Lane, Rockville, MD 20857".

Dated: March 20, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–6863 Filed 3–26–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is approving, with certain exceptions, a proposed amendment submitted by the State of Oklahoma as a modification to its permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the Oklahoma Department of Mines' rules and regulations to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 27, 1990.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments,

and detailed explanation of the conditions of approval of the Oklahoma program was published in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions on program amendments are identified at 30 CFR 936.15 and 936.30.

II. Submission of Program Amendment

In accordance with the provisions of 30 CFR 732.17(d), OSM notified Oklahoma by letters dated July 15, 1985, and June 9, 1987 (Administrative Record Nos. OK–681 and OK–811), of the changes that were necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations as revised since January 19, 1981, when the Oklahoma program was originally approved.

In response to the 30 CFR part 732 letters identified above, by letter dated May 18, 1988 (Administrative Record No. OK–843), Oklahoma submitted a proposed amendment to its approved program. Oklahoma proposed rules for the Oklahoma Department of Mines' rules and regulations at parts 700, 701, 705, 707, 761, 762, 764, 772–775, 777–780, 783–785, 795, 800, 810, 815–817, 819, 823, 824, 827, 828, 842, 843, 845, 846, and 850 that would replace Parts 700, 701, 705, 707, 760–762, 764, 770, 771, 776, 778–780, 782–788, 795, 800, 801, 805–808, 810, 815–819, 823, 824, 826–828, 842, 843, 845, and 850 of the previously-approved rules. The initial program rules as adopted by Oklahoma on July 11, 1978 (Executive Order No. 78–24; Administrative Record No. OK–839), the abandoned mine land reclamation plan as approved by OSM on January 21, 1982 (47 FR 2991), and the blaster training, examination, and certification program as approved by OSM on April 28, 1986 (51 FR 15767), remain in effect and are unchanged by this amendment.

During the review of the proposed amendment submitted on May 18, 1988, OSM identified several concerns. In response to OSM's concerns and two additional 30 CFR part 732 letters dated October 6, 1988, and May 11, 1989 (Administrative Record Nos. OK–873 and OK–886), Oklahoma submitted revisions to the proposed amendment on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989 (Administrative Record Nos. OK–847, OK–866, OK–888, OK–890, and OK–903).

OSM announced receipt of the revisions to the proposed amendment in the June 28, 1988, January 9, 1989, July 7, 1989, August 24, 1989, and December 26, 1989, publications of the **Federal Register** (53 FR 24321, 54 FR 633, 54 FR 29583, 54 FR 35206, and 54 FR 52957). In all but the December 26, 1989, notice, OSM opened a 30-day public comment period and provided an opportunity for a public hearing on the substantive adequacy of the revisions to the proposed amendment. In the December 26, 1989, notice, OSM opened a 15-day public comment period and provided an opportunity for a public hearing. This last public comment period closed on January 10, 1990.

III. Director's Findings

1. General

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions, that the proposed amendment as submitted on May 18, 1988, and revised on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

In general, with minor changes to improve clarity and specificity and to replace Federal references and terms with State references and terms, Oklahoma's proposed rules are identical to the corresponding Federal regulations. The proposed rules deviate from the Federal language to (1) reflect the decisions of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation (II), Rounds II and III*, No. 79–1144 (D.D.C. Oct. 1, 1984), 21 Env't Rep. Cas. 1724 and 620 F. Supp. 1519 (D.D.C. 1985), hereinafter referred to, respectively, as *PSMRL II, Round II, and PSMRL II, Round III*); (2) conform to State requirements concerning administrative procedures and reviews (Oklahoma's Rules of Practice and Procedure for the Coal Reclamation Act of 1979 replaces the Federal references to 43 CFR part 4); and (3) retain certain previously-approved hydrology performance standards which were part of the original program approval and which do not conflict with newly-approved hydrology performance standards.

Only those provisions of the proposed amendment not encompassed by this general finding are discussed below. Any provisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations, although the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and his ongoing oversight of the Oklahoma program. Provisions that are not discussed either contain language substantively identical to the corresponding Federal regulations, or involve provisions that add specificity or lack a Federal counterpart which do not adversely affect other aspects of the program.

2. Section 700.11, Extraction of Coal Incidental to the Extraction of Other Minerals

Section 701(28) of SMCRA excludes from the definition of surface coal mining operations "the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale." On December 20, 1989, OSM promulgated new regulations at 30 CFR 700.11(a)(4) and 30 CFR part 702 implementing the incidental mining exemption of section 701(28) of SMCRA (54 FR 52092). These revised regulations replaced the previous Federal regulations at 30 CFR 700.11(a)(4) (47 FR 33424, August 2, 1982). More specifically, the newly revised Federal regulations at 30 CFR 700.11(a)(4) include a cross-reference to 30 CFR part 702. 30 CFR part 702 establishes comprehensive criteria and procedures for determining whether an operation qualifies initially and on a continuing basis for the 16⅔ percent exemption.

Oklahoma proposes at § 700.11(a)(4) a rule that would exempt from regulation operations involving the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale. This proposal is substantively identical to the previous Federal regulation at 30 CFR 700.11(a)(4) (47 FR 33424, August 2, 1982). However, Oklahoma's proposed rule does not include the detailed exemption criteria, application and reporting requirements, and other general requirements set forth in the recently promulgated Federal regulations at 30 CFR part 702.

Therefore, the Director finds that Oklahoma's proposed § 700.11(a)(4) is less effective than the newly promulgated Federal regulation at 30 CFR 700.11(a)(4). He is not approving § 700.11(a)(4) to the extent that it does not include or reference rules implementing the incidental mining exemption. On February 7, 1990, in accordance with 30 CFR 732.17 (d) through (f), the Director sent to Oklahoma a notification of the revised Federal regulation (Administrative Record No. OK–909). Consistent with the February 12, 1990, 30 CFR part 732 letter, he is requiring that Oklahoma amend its approved program to include rules

corresponding to the newly promulgated Federal regulations at 30 CFR 700.11(a)(4) and 30 CFR part 702.

Until Oklahoma's program is modified by the incorporation of rules corresponding to the newly revised Federal regulations at 30 CFR 700.11(a)(4) and 30 CFR part 702, Oklahoma should, in implementing the incidental mining exemption, rely on OSM's May 7, 1984, guidelines at 49 FR 19338, as interpreted by recent legal decisions, particularly *McNabb Coal Co.* v. *OSMRE* (181 IBLA 282 at 289, March 15, 1988). (For further clarification, see OSM's discussion of this issue in its December 20, 1989 **Federal Register** notice (54 FR 52092 at 52094).)

3. Section 700.11, Applicability—2-Acre Exemption

Oklahoma proposes to delete § 700.11(b) from its rules. This subsection exempts from the requirements of the State surface mining law those operations that extract coal for commercial purposes and affect 2 acres or less. Section 700.11 is, with only nonsubstantive changes, identical to the Federal regulations at 30 CFR 700.11.

As originally enacted, section 528(2) of SMCRA (30 U.S.C. 1278) exempted from the requirements of SMCRA coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100–34, which repealed this exemption and pre-empted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987).

Oklahoma's proposed revision would remove from section 700.11 the language pre-empted by Public Law 100–34. Removal of the acreage exemption from the Oklahoma rules will preclude confusion on the part of the public, which may not be aware of the Federal pre-emption.

The Director finds that the proposed deletion of Oklahoma's § 700.11(b) regarding the 2-acre exemption is no less stringent than SMCRA, as amended by Public Law 100–34.

4. Section 701.5, Definitions

(a) *Definition of Affected Area.* Oklahoma proposes a definition of "affected area" at § 701.5 that is substantively identical to the Federal definition at 30 CFR 701.5. However, in *PSMRL II, Round III,* the U.S. District Court remanded the Federal definition of "affected area" because it excluded all roads with more than incidental public use, an exclusion which the court found to be inconsistent with the definition of "surface coal mining operations" at section 701(28) of SMCRA (51 FR 41952 at 41953, November 20, 1986). Oklahoma did not incorporate this remand into its proposed definition.

Therefore, because Oklahoma's proposed definition of "affected area" does not conform to the court's decision, the Director finds that the Oklahoma definition of "affected area" at § 701.5 is less stringent than section 701(28) of SMCRA. He is not approving the proposed definition to the extent that it generally excludes public roads without regard to the effect of mining use upon the roads. The Director will, pursuant to 30 CFR 732.17(d) inform Oklahoma of the regulatory changes needed to amend this definition.

(b) *Definition of Alluvial Valley Floors (AVF's).* Oklahoma proposes a definition for AVF at § 701.5 that is identical to the Federal definition at 30 CFR 701.5. However, Oklahoma has not proposed any additional AVF rules corresponding to the Federal regulations at 30 CFR part 822 that are applicable west of the 100th meridian and address special permanent program standards for operations in AVF's.

Although there are coal deposits west of the 100th meridian that passes through the panhandle of western Oklahoma, there has never been and there currently is no proposed mining in this area. Oklahoma has submitted a policy statement committing it to revise its program to include AVF rules if mining is proposed west of the 100th meridian (Administrative Record No. OK–903). On this basis, the Director finds that Oklahoma's proposed definition of AVF at § 701.5 is no less effective than the corresponding Federal definition at 30 CFR 701.5.

(c) *Definition of Previously Mined Areas.* At § 701.5 of its proposed rules, Oklahoma defines "previously mined area" as "land previously mined on which there were no surface coal mining operations subject to the standards of the Federal Act."

Oklahoma's proposed definition of "previously mined area" is substantively identical to the Federal definition at 30 CFR 701.5. However, in the case of *National Wildlife Fed'n* v. *Lujan,* Nos. 87–1051, 87–1814, and 88–2788 (D.D.C. Feb. 12, 1990), the court addressed two concerns pertaining to the Federal definition. The first was whether "previously mined" means that mining occurred (1) before the date Congress enacted SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. This issue is important because pursuant to 30 CFR 816.106(b), 817.106(b), and 819.19(b) (which sections are identical to Oklahoma's proposed rules at §§ 816.106(b), 817.106(b) and 819.19(b)), operators remining previously mined areas do not need to completely eliminate reaffected or enlarged highwalls if there is not enough reasonably available spoil to do the job. Rather, in such situations, the operator's duty is to eliminate the highwalls only to the "maximum extent technically practical". Given this limited exception to the requirement to completely remove all highwalls, the second related concern was that the current definition might allow an operator to remine an area that had once been fully and satisfactorily reclaimed, and then to leave the area only partially reclaimed by not completely eliminating any remined or reaffected highwalls.

The court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue" (*National Wildlife Fed'n,* Mem. Op. at 42, citing to *In re: Permanent Surface Mining Regulation Litigation II, Round I,* No. 79–1144, Mem. Op. (D.D.C. July 6, 1984, 21 Env't Rep. Cas. 1193)). Consequently, the court held that the date of enactment of SMCRA (August 3, 1977) "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured." (*Id.,* Mem. Op. at 50). With respect to the second issue, the court held that a "definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible." (*Id.,* Mem. Op. at 48). Accordingly, the court remanded "the definition of prevously mined area to the Secretary to correct both of the flaws identified above." (*Id.,* Mem. Op. at 51).

Although OSM has not yet actually suspended the above definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Oklahoma's proposed definition. Accordingly, OSM has evaluated the proposed amendment based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based on the above and the court's remand of the Federal definition of "previously mined area" to "correct both of the flaws identified" in the decision, the Director finds that to the extent Oklahoma's proposed definition of "previously mined area" (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977 (the date of enactment of SMCRA), or (2) allows lands which have once been fully and

satisfactorily reclaimed to be remined and then only partially reclaimed, such definition is less stringent than the general provisions of SMCRA. The Director is, therefore, not approving Oklahoma's proposed definition of "previously mined area" at section 701.5 to the extent that the definition (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977, or (2) allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed. The Director will, pursuant to 30 CFR 732.17(d), inform Oklahoma, of regulatory changes needed to amend this definition.

5. Section 705.21, Appeals Procedures for Restriction on Financial Interests of State Employees

The Federal regulations at 30 CFR 705.21(b) provide for appeals procedures when OSM requires the head of a State regulatory authority to resolve prohibited interests in accordance with 30 CFR 705.19(b). This provision specifies that a head of a State regulatory authority may file his or her appeal with the Director of OSM. 30 CFR 705.21(a) provides for appeals procedures for employees other than the head of the State regulatory authority and states that such employees may file appeals in writing through established procedures within their particular State.

Oklahoma proposes at § 705.21 a corresponding rule to the Federal regulation at 30 CFR 705.21(a) that all employees may file appeals in accordance with the Appeals Board established in § 705.22. However, Oklahoma proposes no corresponding rule to the Federal regulation at 30 CFR 705.21(b).

The Federal regulations at 30 CFR 705.21(b) afford the head of the Oklahoma regulatory authority a right to appeal, and this right still exists even though it is not specified in Oklahoma's approved program. Additionally, because the appeals procedures outlined in 30 CFR 705.21(b) are the only ones available to the head of the Oklahoma regulatory authority for actions taken under 30 CFR 705.19(b), OSM would not recognize appeals made through other procedures, and any required remedial actions to resolve prohibited interests would remain in effect unless/until the head of Oklahoma's regulatory authority perfected a procedurally correct appeal. For these reasons, it is not necessary for Oklahoma to include a corresponding requirement in its program.

Based on the above discussion, the Director finds that Oklahoma's proposed § 705.21 is no less effective than the Federal regulations at 30 CFR 705.21.

6. Section 762.5, Definition of Fragile Lands

Oklahoma's proposed definition of "fragile lands" at § 762.5 is identical to the Federal definition at 30 CFR 762.5 except that Oklahoma adds to the listed examples of "fragile lands" "buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited." This clause was included in Oklahoma's original program. Oklahoma extends environmental protection beyond the minimum limits of the Federal regulations. Therefore, the Director finds that Oklahoma's proposed definition of "fragile lands" at § 762.5 is no less effective than the Federal definition at 30 CFR 762.5.

7. Section 777.14, Maps and Plans

Oklahoma proposes a rule at § 777.14 that is, with one exception, substantively identical to the Federal regulation at 30 CFR 777.14. The exception is that Oklahoma requires maps of the permit area to be submitted at a scale of 1:200. The Federal regulation requires permit area maps at a scale of 1:6000 or larger. Because maps at a scale of 1:200 provide more detail, clarity, and accuracy than maps at a scale of 1:6000, the Director finds that Oklahoma's proposed § 777.14 is no less effective than the Federal regulation at 30 CFR 777.14.

8. Sections 780.21 and 784.14, Probable Hydrologic Consequences (PHC) Determinations

The Federal regulations regarding the PHC determinations at 30 CFR 780.21(f) and 784.14(e) were challenged in *PSMRL II, Round III* on the grounds that they were wrongly limited to activities occurring during the "life of the permit" as opposed to the "life of the mine." Rather than ruling on the substance of this argument, the court instead remanded the rules on procedural grounds. As a result of the court decision, OSM suspended the PHC regulations (51 FR 41952 at 41957, November 20, 1986). OSM reexamined the regulations and on September 19, 1988, promulgated regulations at 30 CFR 780.21(f) and 784.14(e) identical to those that had been previously suspended (53 FR 36394 at 36400).

However, in the preamble to the new regulations, OSM clarified how its interpretation to limit the PHC determination to the permit and adjacent areas ("life of the permit") was appropriate. OSM interprets the PHC determination to apply to all activities authorized under the permit for the permit and adjacent areas. The PHC determination need not consider those activities that may occur during the life of the mine that would be authorized under future permitting activities. A new PHC determination would be required for any additional surface mining activity that could impact the hydrologic regime authorized during the initial permit term or in future permitting actions. A renewal of the initial permit with no changes would not necessitate a new PHC determination. Therefore, OSM considers the PHC determination to be "spatial" rather than "temporal" in nature (53 FR 36394 at 36396–36399, September 19, 1988).

Oklahoma's proposed rules at §§ 780.21(f) and 784.14(e) are substantively identical to the Federal regulations at 30 CFR 780.21(f) and 784.14(e). Additionally, Oklahoma has submitted a policy statement specifying that its interpretation of the PHC rules is "spatial" in nature (Administrative Record No. OK–903). On this basis, the Director finds that Oklahoma's proposed §§ 780.21(f) and 784.14(e) are no less effective than the corresponding Federal regulations at 30 CFR 780.21(f) and 784.14(e).

9. Parts 779, 780, 783, 784, 816, and 817, Inspections of Impoundments by Qualified Professional Land Surveyors

Oklahoma proposes (1) At §§ 779.25(b), 783.25(b), 780.14(c), and 784.23(c) to allow qualified, registered, professional land surveyors to prepare and certify cross sections, maps, and plans required in surface coal mining and reclamation permit applications; (2) at §§ 780.25(a)(1) and (a)(3)(i), and 784.16(a)(1)(i) and (a)(3)(i) to allow qualified, registered, professional land surveyors to prepare and certify general plans for each proposed sediment pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area, and to certify detailed plans for structures not meeting the size or other criteria of 30 CFR 77.216(a) (except for coal processing waste dams and embankments, which must be certified by an engineer); (3) at §§ 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), and 817.49(a)(2) to allow qualified, registered, professional land surveyors to certify upon construction siltation structures and to prepare and/or certify the design of impoundments in accordance with section 780.25(a); and (4) at §§ 784.24(b), 816.151(a), and 817.151(a) to allow qualified, registered, professional land surveyors to prepare and/or certify

primary roads of underground and surface mines.

On April 24, 1985, and November 8, 1988, OMS published the following final regulations implementing an amendment to section 507(b)(14) of SMCRA: 30 CFR 779.25(b), 783.25(b), 780.14(c), 784.23(c), 780.25(a)(1) and (a)(3)(i), 784.16(a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a) (50 FR 16194, 53 FR 45190). These regulations authorize qualified, registered, professional land surveyors (1) To prepare and certify cross sections, maps, and plans; (2) to prepare and certify general plans for siltation structures and to prepare and/or certify impoundments in accordance with 780.25(a); and (3) to prepare and/or certify construction of primary roads in any State which authorizes land surveyors to prepare and certify such documents. Oklahoma's proposed rules are substantively identical to the corresponding Federal regulations.

On September 16, 1988, Oklahoma submitted to OSM the by-laws of the State Board of Registration for Professional Engineers and Surveyors (Administrative Record No. OK–862). These by-laws state that registered land surveyors can provide services "comprising the determination of the location of land boundaries and land boundary corridors, incidental topography, the preparation of maps showing the type and area of tracts of land and their subdivisions into smaller tracts; the prepartion of maps showing the layout of roads, tracts, and rights-of-ways of same to give access to smaller tracts; and the preparation of official plats and maps of said land hereof in this State." At the same time, Oklahoma submitted the statutes regulating professional engineers and land surveyors. These statutes define the term "practice of land surveying" to include "the application of special knowledge of the principles of mathematics, the related physical and applied sciences and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property and land boundaries and for the platting and layout of lands and subdivisions thereof, including the topography, and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys" (Okla. Stat. tit. 59, sections 475.1–475.22b, Supp. 1982). These documents do authorize registered land surveyors in Oklahoma to prepare and certify cross sections, maps and plans that are required under proposed §§ 779.25(b), 783.25(b), 780.14(c), and 784.23(c), but they do not, either directly or indirectly, authorize registered land surveyors in Oklahoma to prepare and/or certify engineered designs for siltation structures, impoundments, and roads.

Therefore, the Director finds Oklahoma's proposed §§ 779.25(b), 783.25(b), 780.14(c), and 784.23(c) to be no less effective than the Federal regulations at 30 CFR 779.25(b), 783.25(b), 780.14(c), and 784.23(c), and no less stringent than section 507(b)(14) of SMCRA (as amended). However, the Director finds Oklahoma's proposed §§ 780.25 (a)(1) and (a)(3)(i), 784.16 (a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a) to be less effective than the corresponding Federal regulations at 30 CFR 780.25 (a)(1) and (a)(3)(i), 784.16 (a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a), and less stringent than section 507(b)(14) of SMCRA (as amended). He is not approving these subsections and is requiring that Oklahoma revise these subsections to delete the authorization for land surveyors to prepare and/or certify plans for siltation structures, impoundments, and roads.

10. Sections 784.20 and 817.121, Subsidence Control

Oklahoma's proposed rule at § 817.121(c)(2) provides that *to the extent required under applicable provisions of State law*, operators must either (1) correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage, or (2) compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence (emphasis supplied).

Oklahoma's proposed rule at subsection 817.121(c)(2) is identical to the Federal regulation at 30 CFR 817.121(c)(2). However, in the case of *National Wildlife Fed'n* v. *Lujan*, Nos. 87–1051, 87–1814, and 88–2788 (D.D.C. Feb. 12, 1990), the court held that the Federal regulations may not limit, by making reference to State law, the duty of an underground operator to correct material damage to structures caused by subsidence. More specifically, the court held that 30 CFR 817.121(c)(2) is inconsistent with sections 102(b) and 516(b)(1) of SMCRA which generally provide, respectively, that rights of surface landowners and other persons with a legal interest in land be fully protected from surface coal mining operations, and that operators be required to adopt measures in order to (1) prevent subsidence to the extent technologically and economically feasible, (2) maximize mine stability, and (3) maintain the value and reasonably foreseeable use of surface lands. The court reasoned that in enacting these provisions, Congress did not differentiate, based upon State law, between the duties of underground operators with respect to subsidence damage to land or structures. (*Id.*, mem. op. at 12). Accordingly, the court remanded "this rule to the Secretary to be revised by striking the reference to state law." (*Id.*, mem. op. at 20).

Although OSM has not yet actually suspended the above Federal regulation, OSM may not, because of the court's remand, use the regulations at 30 CFR 817.121(c)(2) in evaluating the sufficiency of Oklahoma's proposed rule. Accordingly, OSM has evaluated the proposed amendments based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based on (1) the court's finding that the "State-law limitation" on the duty to correct subsidence damage to structures is contrary to the provisions of SMCRA, and (2) the court's specific instruction to revise 30 CFR 817.121(c)(2) by "striking the reference to State law", the Director finds that to the extent Oklahoma's proposed rule at § 817.121(c)(2) references requirements under State law, it is less stringent than sections 102(b) and 516(b)(1) of SMCRA. The Director is, therefore, not approving Oklahoma's proposed rule at § 817.121(c)(2) to the extent that it references requirements under State law.

The Director also notes that 30 CFR 784.20(g)(2) requires that permit applications contain a description of measures to be taken in accordance with 30 CFR 817.121(c) to mitigate or remedy any subsidence-related damage to, or diminution in value or reasonably foreseeable use of, structures or facilities *to the extent required under State law* (emphasis supplied). In other words, this permitting requirement contains a "State-law limitation" identical to that remanded by the court in 30 CFR 817.121(c)(2). Although the court did not specifically make a ruling with regard to 30 CFR 784.20(g)(2), the Director finds that the remand of 30 CFR 817.121(c)(2) also affects 30 CFR 784.20(g)(2).

Oklahoma's proposed rule at § 784.20(g)(2) is identical to the Federal regulation at 30 CFR 784.20(g)(2). Therefore, the Director finds that to the extent that Oklahoma's proposed rule at § 784.20(g)(2) references requirements under State law, the rule is less stringent than sections 102(b) and 516(b)(1) of SMCRA. Consequently, the Director is not approving Oklahoma's proposed rule at § 784.20(g)(2) to the extent that it references requirements under State law.

The Director will, pursuant to 30 CFR 732.17(d), inform Oklahoma of the regulatory changes needed to amend the above rules.

11. Section 800.40, Inspections to Release Performance Bonds

Oklahoma proposes at § 800.40(b)(1) a rule regarding inspections for release of performance bonds that with one exception is identical to the Federal regulation at 30 CFR 800.40(b)(1). Oklahoma has excluded a requirement that, upon request by any person with an interest in bond release, the regulatory authority may arrange with the permittee to allow access to the permit area for the purpose of gathering information relevant to the performance bond release proceeding.

The preamble to the Federal regulation states that (1) the intent of this provision is to parallel that under section 513 of SMCRA relating to informal conferences on permit applications, and (2) the Federal regulation does not presume the right of citizen access, but the procedure is set forth to assist citizens in supporting their possible contention of reclamation inadequacy (48 FR 32932 at 32952, July 19, 1983). The regulatory authority is only required to determine on a case-by-case basis whether to make such an arrangement with the permittee. Therefore, the arrangement is discretionary on the part of the regulatory authority.

Because the language in Oklahoma's proposed rule, with exception of the excluded provision, is substantively identical to the Federal regulation, the Director finds that Oklahoma's proposed § 800.40(b)(1), with the exception of the excluded provision, is no less effective than the Federal regulation at 30 CFR 800.40(b)(1). However, because the exclusion of this provision would prohibit citizens from knowledge of a possible right of access, the Director is requiring Oklahoma to amend § 800.40(b)(1) to clearly set forth that Oklahoma has discretionary authority to arrange with the permittee to allow access to any person with an interest in the areas under consideration for bond release.

12. Sections 816.89 and 817.89, Disposal of Noncoal Wastes

Oklahoma proposes at § 816.89(d) and 817.89(d) rules requiring that noncoal mine waste, defined as "hazardous" under section 3001 of the Federal Resource Conservation and Recovery Act (RCRA) and 40 CFR part 261, be handled in accordance with Subtitle C of RCRA and any implementing regulations. Okkahoma's proposed requirements are identical to the language of the Federal regulations at 30 CFR 816.89(d) and 817.89(d). However, the Federal regulations at 30 CFR 816.89(d) and 817.89(d) were suspended on November 20, 1986 (51 FR 41952), to implement the decision of the U.S District Court for the District of Columbia in *PSMRL II, Round III.* The court remanded these rules because OSM failed to comply with the public notice and public comment requirements of the Administrative Procedure Act in promulgating these Federal regulations. No substantive issues were involved (51 FR 41952 at 41959). Because of the court's remand of 30 CFR 816.89(d) and 817.89(d), OSM may not use these regulations in evaluating the sufficiency of Oklahoma's proposed rules. Accordingly, OSM evaluated Oklahoma's proposed amendments based upon their consistency with the court's decision and the applicable provisions of SMCRA.

As stated previously, the court's decision to remand the Federal regulations was based solely on procedural rather than substantive grounds. Since the Oklahoma rulemaking process has provided for adequate public participation, the promulgation by Oklahoma of its proposed rules is not inconsistent with the court's ruling. Additionally, the adoption by Oklahoma of a Federal provision that was suspended on procedural rather than substantive grounds does not, by itself, make this portion of Oklahoma's program less effective than the corresponding Federal regulations. Rather, a determination as to whether Oklahoma's proposed rules are consistent with SMCRA must also be made.

Section 515(b)(14) of SMCRA generally states that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are to be treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters. Because Oklahoma's proposed rules at §§ 816.89 and 817.89 provide for the handling/disposal of toxic or "hazardous" noncoal mine wastes in a manner designed to prevent contamination of ground or surface waters, *i.e.*, pursuant to the provisions of subtitle C of RCRA, the Director finds that Oklahoma's proposed subsections 816.89 and 817.89 are no less stringent than section 515(b)(14) of SMCRA.

13. Sections 816.100, Contemporaneous Reclamation

Oklahoma proposes at § 816.100 requirements that reclamation operations occur as contemporaneously as practicable with mining operations, except when such operations are conducted in accordance with a variance for combined surface and underground mining activities issued under § 785.18. Oklahoma also proposes at § 816.100(a) schedules including time and distance factors for contour mining and area strip mining, and an allowance for a time schedule to be approved by Oklahoma for open-pit mining with thin overburden.

Oklahoma's proposed rule requires (1) for contour mining that rough backfilling and grading follow coal removal by not more than 60 days or 1,500 linear feet, (2) for open-pit mining with thin overburden that Oklahoma shall approve a schedule, on the basis of materials submitted under § 780.18(b)(3), by which time rough backfilling and grading shall occur, and (3) for area strip (surface) mining that rough backfilling and grading be completed within 180 days following coal removal and not more than four spoil ridges behind the pit being worked.

OSM's contemporaneous reclamation regulation at 30 CFR 816.100 (48 FR 24638, June 1, 1983) was remanded by the U.S. District Court for the District of Columbia in *PSMRL II, Round II* to the extent that it did not specify both time and distance factors defining contemporaneous reclamation (*PSMRL II, Round II,* Mem. Op. at 52). The Federal regulation at 30 CFR 816.101(a) (44 FR 15312 at 15411, March 13, 1979), which had been in effect prior to OSM's promulgation of the remanded regulation at 30 CFR 816.100, did specify such time and distance factors.

Although OSM never actually suspended the remanded regulation, OSM may not, because of the court's remand, use the June 1, 1983, Federal regulation in evaluating the sufficiency of Oklahoma's proposed rule. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the court's decision and the applicable provisions of SMCRA.

Oklahoma's proposed § 816.100(a) is substantively identical to the March 13, 1979, Federal regulation at 30 CFR 816.101(a). Thus, Oklahoma's proposed § 816.100(a) is consistent with the court's decision in that it does specify objective and reasonable time and distance factors defining contemporaneous reclamation.

Section 515(b)(16) of SMCRA provides that reclamation efforts are to proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. It does not expressly define contemporaneous reclamation. The Director therefore finds that Oklahoma's proposed section 816.100 is no less stringent than section 515(b)(16) of SMCRA.

14. Sections 816.104 and 816.105, Backfilling and Grading of Thin and Thick Overburden Surface Mines

Oklahoma proposes requirements at § 816.104(c) and § 816.105, respectively, that provisions for thin overburden apply when the final thickness of the overburden is less than 0.8 of the initial thickness, and that provisions for thick overburden apply when the final thickness of the overburden is greater than 1.2 of the initial thickness.

On October 1, 1984, the U.S. District Court for the District of Columbia in *PSMRL II, Round II* remanded OSM's backfilling and grading regulations for thin and thick overburden surface mines at 30 CFR 816.104(a) and 816.105(a) (48 FR 23356 at 23369, May 24, 1983) because the regulations did not provide objective formulae for defining thick and thin overburden (*PSMRL II, Round II,* Mem. Op. at 53). The Federal regulations at 30 CFR 816.104(a) and 816.105(a) (44 FR 15312 at 15411, March 13, 1979) that had been in effect prior to OSM's promulgation of the remanded regulations at 30 CFR 816.104(a) and 816.105(a) did specify such objective formulae.

Although OSM never actually suspended the remanded rules, OSM may not, because of the court's remand, use the May 24, 1983, Federal regulations in evaluating the sufficiency of Oklahoma's proposed rules. Accordingly, OSM evaluated the proposed amendments based upon their consistency with the court's decision and the applicable provisions of SMCRA.

Oklahoma's proposed § 816.104(c) and § 816.105, respectively, are substantively identical to the March 13, 1979, Federal regulations at 30 CFR 816.104(a) and § 816.105(a). Thus, Oklahoma's proposed rules are consistent with the court's decision in that they do specify objective and reasonable formulae for defining thick and thin overburden.

Section 515(b)(3) of SMCRA creates a limited exception, with regard to areas of thin and thick overburden, from the general statutory requirement to restore disturbed lands to approximate original contour. More specifically, section 515(b)(3) states that if the overburden is either insufficient or more than sufficient to restore approximate original contour, then operators must use overburden and other spoil and waste materials to attain the lowest practical grade, but not more than the angle of repose. Section 515(b)(3) of SMCRA does not expressly define thin and thick overburden. The Director therefore finds that Oklahoma's proposed §§ 816.104 and 816.105 are no less stringent than section 515(b)(3) of SMCRA.

15. Sections 816.116 and 817.116, Standards of Revegetation Success.

(a) *Subsections 816.116(a)(1) and 817.116(a)(1), Bond Release Guidelines.* The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for revegetation success and statistically valid sampling techniques for measuring vegetation ground cover, production, and stocking be selected by the regulatory authority and included in the approved regulatory program. The preamble to these regulations (48 FR 40140 at 40150, September 2, 1983) further explains that the selected sampling techniques and success standards are to be subject to public review and comment.

Oklahoma proposes §§ 816.116(a)(1) and 817.116(a)(1) that reference success standards identified in the Bond Release Guidelines published by the Department of Mines. However, Oklahoma has not submitted these guidelines to OSM for approval. Therefore, the Director finds that Oklahoma's proposed §§ 816.116(a)(1) and 817.116(a)(1) are less effective than the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1). He is not approving the proposed §§ 816.116(a)(1) and 817.116(a)(1) and is requiring Oklahoma to submit the Bond Release Guidelines to OSM for approval.

(b) *Subsections 816.116(b)(3)(iii) and 817.116(b)(3)(iii), Revegetation Ground Cover.* Oklahoma proposes at §§ 816.116(b)(3)(iii) and 817.116(b)(3)(iii) a technical standard for revegetative ground cover of 80 percent on areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products. The proposed rules also require that in no case shall vegetative ground cover be less than that required to achieve the postmining land use.

The corresponding Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii) do not specify a percentage of ground cover but do require that vegetative ground cover shall not be less than that required to achieve the approved postmining land use. The Federal regulation was written in general form because of the variation in natural ground cover conditions throughout the United States; therefore, a specific percentage of ground cover was not required. It was anticipated that each State would either require the use of reference areas, specify minimum levels of ground cover as a percentage of surface area, or adopt some other acceptable standard (48 FR 40140 at 40152, September 2, 1983). OSM recognizes that extensive ground cover may be incompatible with maximum tree survival and growth since trees and herbaceous plants compete for moisture, nutrients, and light. In situations where the long-term vegetative cover is forest, a light herbaceous cover would be acceptable if it was adequate to protect the soil surface from erosion (48 FR 40140 at 40142, September 2, 1983).

Because the land uses require woody plants, the Director finds that Oklahoma's proposed 80 percent ground cover on areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products is an acceptable standard, but only insofar as it is adequate to control erosion. Based on the above qualification, the Director finds that Oklahoma's proposed §§ 816.116(b)(3)(iii) and 817.116(b)(3)(iii) are not less effective than the corresponding Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii).

(c) *Subsections 816.116(c)(4) and 817.116(c)(4), Normal Husbandry Practices.* Oklahoma proposes at §§ 816.116(c)(4) and 817.116(c)(4) that the Director of the Oklahoma program may approve selective husbandry practices if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Oklahoma further proposes in these rules that approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control, and any pruning, reseeding and transplanting specifically necessitated by such actions. With one exception, Oklahoma's proposed rules are substantively identical to the

corresponding Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4). The exception is that the corresponding Federal regulations require that the regulatory authority may approve selective husbandry practices provided it obtains prior approval from the Director of OSM in accordance with 30 CFR 732.17. While Oklahoma notes in its proposed §§ 816.116(c)(4) and 817.116(c)(4) that it has not identified any husbandry practices which must be approved in accordance with 30 CFR 732.17, Oklahoma's proposed rules require approval only by the Director of the Oklahoma program.

On September 7, 1988, OSM revised its regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) to require OSM approval of normal husbandry practices (53 FR 34636). OSM concluded that (1) singular approval by regulatory authorities would grant flexibility that was inappropriate in a national performance standard, and (2) the requirement for OSM approval of normal husbandry practices proposed by State regulatory authorities based upon State-specific documentation of local husbandry practices would ensure that augmentive practices are not allowed to occur without restarting the operator's period of responsibility (53 FR 34636 at 34641).

Therefore, the Director finds that Oklahoma's proposed §§ 816.116(c)(4) and 817.116(c)(4) are less effective than the corresponding Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) to the extent that they do not require prior OSM approval of any husbandry practices. On Feruary 12, 1990, the Director sent to Oklahoma a notification in accordance with 30 CFR 732.17(f)(1) of the need for a program amendment pertaining to normal husbandry practices (Administrative Record No. OK–910). Consistent with the February 12, 1990, 30 CFR part 732 letter, the Director is requiring Oklahoma to amend its rules to require that any husbandry practices which Oklahoma may wish to adopt must be first approved by the Director in accordance with 30 CFR 732.17.

16. Section 823.12, Prime Farmland Restoration

Oklahoma proposes at § 823.12(a)(1) a rule pertaining to reclamation of prime farmland that would allow suitable soil materials other than the original topsoil to *equal or exceed* the original soil in productive capacity (emphasis added). The Federal regulation at 30 CFR 823.12(c)(1) requires that any soil substituted for the original topsoil during prime farmland reclamation *exceed* the original topsoil in productive capacity (emphasis added). OSM revised 30 CFR 823.12(c)(1) on May 12, 1983 (48 FR 21446) and, in order to be consistent with section 515(b)(7)(A) of SMCRA (*Id.* at 21455), deleted from the previous 1979 regulation the provision that prime farmland topsoil substitute material could equal the original soil in productive capacity.

Because Oklahoma's proposed rule would allow soil substituted for the original topsoil in areas classified as prime farmland to just equal, and not exceed, the original soil productivity, the Director finds that Oklahoma's proposed rule at § 823.12(a)(1) is less effective than the Federal regulation at 30 CFR 823.12(c)(1) and less stringent than section 515(b)(7)(A) of SMCRA. Therefore, he is not approving § 823.12(a)(1), and is requiring Oklahoma to amend this rule to require that, when the operator does not salvage and store the original prime farmland topsoil, the productive capacity of the reclaimed substituted soil exceed that which existed prior to mining.

17. Section 827, Coal Preparation Plants

With the exception, Oklahoma proposes rules at section 827 that are substantively identical to the corresponding Federal regulations at 30 CFR part 827 regulating coal preparation plants not located within the permit area of a mine. The exception is that Oklahoma has not proposed a counterpart rule to 30 CFR 827.13. 30 CFR 827.13 sets forth interim performance standards for coal preparation plants not located within the permit of a mine (*i.e.* those coal preparation plants not located within the permit area of a mine which were in existence prior to the effective date of SMCRA, *National Wildlife Fed'n* v. *Lujan*, Nos. 87–1051, 87–1814, and 88–2788 (D.D.C. Feb. 12, 1990)). All coal preparation plants not located within the permit of a mine, in Oklahoma, are regulated under the permanent program performance standards; therefore, Oklahoma did not propose interim standards for coal preparation plants. Based on this reason, the Director finds that Oklahoma's proposed section 827 is no less effective than the corresponding Federal regulations at 30 CFR part 827.

18. Section 845.21, Use of Civil Penalty Fees

The Federal regulation at 30 CFR 845.21(a) authorizes the expenditure of money, collected pursuant to the assessment of civil penalties under section 518 of SMCRA, for reclamation of lands adversely affected by coal mining practices after August 3, 1977. Oklahoma's proposed § 834.21(a) is substantively identical to the Federal regulation at 30 CFR 845.21(a).

However, at 30 CFR 845.21(b) (1)–(4), the Federal regulations list by priority four criteria by which the fees may be allocated. They are (1) emergency projects as defined at 30 CFR 870.5, (2) reclamation projects that qualify as priority 1 under section 403 of SMCRA, (3) reclamation projects that qualify as priority 2 under section 403 of SMCRA, and (4) reclamation of bond forfeiture sites. Oklahoma's proposed rules at §§ 845.21(b) (1) and (2) include only the first and last of the four criteria listed in the Federal regulations. Oklahoma's proposed rules would now allow civil penalty fees to be used for reclamation projects which qualify as priority 1 and 2 under section 403 of SMCRA, as specified at 30 CFR 845.21(b) (2) and (3).

Priority 1 and 2 reclamation projects under section 403 of SMCRA are the same as those listed in section 740 of the Oklahoma Coal Reclamation Act of 1979. These projects would be those post-August 3, 1977, abandoned mined sites that involve protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices (priority 1) and protection of public health, safety, and general welfare from adverse effects of coal mining practices (priority 2).

Because Oklahoma would, in effect, be using civil penalty fees for bond forfeiture sites without first giving consideration to priority 1 and 2 post-August 3, 1977, abandoned mined sites, the Director finds that Oklahoma's proposed § 845.21(b) is less effective than the Federal regulation at 30 CFR 845.21(b). Therefore, he is not approving § 845.21(b), and is requiring Oklahoma to amend § 845.21(b) to include as the second and third criteria for expenditure of civil penalty fees for reclamation of lands adversely affected by post-August 3, 1977, coal mining practices, reclamation projects that qualify as priority 1 and 2 under section 740 of Oklahoma's Coal Reclamation Act of 1979.

19. 30 CFR 936.10(b), Provisions of the State Regulatory Program Affirmatively Disapproved To Comply With the Order of the District Court

In the **Federal Register** notice announcing the Department's approval of Oklahoma's original program, the Secretary, at 30 CFR 936.10(b), affirmatively disapproved several provisions of Oklahoma's program that incorporated suspended or remanded Federal regulations (See 46 FR 4902 at 4911, January 19, 1981). The affirmative

disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove . . . those segments of a State program that incorporate a suspended or remanded regulation" (*In re: Permanent Surface Mining Regulation Litigation,* Civil Action 79–1144, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

The proposed Oklahoma amendments being considered in this rulemaking consist of a completely new set of rules which will replace those approved earlier and to which the affirmative disapprovals at 30 CFR 936.10(b) applied. These Oklahoma proposed rules are based on the Federal rules as revised in response to the 1980 remands, not on the remanded 1979 language. Since the proposed regulations were drafted well after the 1980 Federal court decisions resulting in the affirmative disapprovals, the Director finds that Oklahoma has had adequate opportunity to revise its rules to reflect the judicial remands. Furthermore in submitting this amendment, the head of the Oklahoma regulatory authority has specifically requested approval of the proposed rules. Hence, under the terms of the court's August 15, 1980, ruling, the affirmative disapprovals at 30 CFR 936.10(b) are no longer necessary and the Director is removing them.

Accordingly, the proposed amendments submitted by the State will be reviewed on their own merits without regard to the earlier affirmative disapprovals.

IV. Public and Agency Comments

1. Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for public hearing (June 28, 1988, January 9, 1989, July 7, 1989. August 24, 1989, and December 26, 1989, publications of the **Federal Register** at 53 FR 24321, 54 FR 633, 54 FR 29583, 54 FR 35206, and 54 FR 52957). Because no one requested an opportunity to testify at a public hearing, no hearing was held. The only comments received were from the National Wildlife Federation (NWF, Administrative Record No. OK–904). NWF's comments pertained to the coal exploration and incidental mining provisions of Oklahoma's proposed amendment.

(a) *Adequacy of Coal Exploration Rules.* NWF commented that OSM's coal exploration regulations (especially as such regulations are implemented by Oklahoma) are inadequate. In this regard, NWF noted that it has challenged the Federal coal exploration rules as being illegal in a pending Federal court suit (*NWF* v. *Hodel,* Civ. No. 89–0504–TAF (D.D.C. filed Feb. 24, 1989)). In its comments, NWF incorporated by reference its complaint in this case and its August 5, 1988, comments on the adequacy of the then-proposed Federal coal exploration rules.

It is not proper, in the context of the subject rulemaking, to consider the sufficiency or the legality of the Federal regulations. Rather, this rule making is limited solely to a consideration of the adequacy of Oklahoma's proposed rules. Furthermore, there is no requirement, as NWF suggests, that Oklahoma's proposed State program amendment rules be consistent with the issues raised in a pending Federal court case challenging the legality or sufficiency of the underlying Federal regulations. Consequently, the Director has determined that NWF's comments regarding the adequacy of OSM's coal exploration regulations are beyond the scope of this rulemaking, and that no further action need be taken with regard to these comments.

In addition to attacking the adequacy of the Federal coal exploration rules, NWF also noted purported deficiencies in Oklahoma's proposed rules. In support of the comments, NWF cited examples from OSM's annual evaluation reports of purported abuses by Oklahoma of its (Oklahoma's) coal exploration rules. As explained in more detail below, the Director has decided to not take any further action with regard to these comments. Therefore, the specific nature of the comments will not be discussed. Suffice it to say that NWF generally noted eight examples of apparent abuse of Oklahoma's coal exploration rules as they pertain to test burns. NWF furthermore suggested specific language needed to reform Oklahoma's proposed coal exploration rules for the following topics: information required for notices of intent to explore for operations removing less than 250 tons of coal, information required on maps, information required in permit applications for exploration operations removing more than 250 tons of coal, public notice requirements, availability of information under section 772, required bond amounts, expiration limits for notices of intent to explore, bond release criteria, and performance standards regarding vehicular travel, blasting, hydrologic protection, and buffer zones.

The Director's standards for evaluation of State program amendments are the provisions of SMCRA and the implementing Federal regulations. That is, State submittals must be evaluated to ensure that they are in accordance with the provisions of SMCRA and are consistent with the duly promulgated Federal regulations. (See 30 CFR 732.15(a).) Consequently, notwithstanding NWF's pending legal challenge to the sufficiency of the Federal rules, unless or until the court determines that such rules are illegal or inadequate, the Director will utilize the duly promulgated provisions of 30 CFR part 772 to determine whether Oklahoma's proposed coal exploration rules can be approved. Additionally, the Director has no authority, as NWF suggests, to require Oklahoma to adopt rules which are more effective than the existing Federal regulations, or more stringent than the provisions of SMCRA.

Oklahoma's proposed coal exploration rules at section 772 are substantively identical to the corresponding Federal regulations at 30 CFR part 772. For this reason, the Director is approving Oklahoma's proposed coal exploration rules at section 772 as being no less effective than the Federal regulations at 30 CFR part 772. (See finding No. 1.) For this same reason, the Director is not accepting the comments of NWF concerning the purported inadequacy of Oklahoma's proposed rules, and is not taking any further action with regard to the same.

(b) *Permit Application Information and Inspections.* NWF also commented that OSM (1) must require Oklahoma to require and maintain complete and accurate application and inspection information for all exploration operations, and (2) should require Oklahoma to conduct inspections of all exploration operations. NWF suggests that Oklahoma has failed to adequately implement its approved program.

The purpose of this rulemaking is an evaluation of Oklahoma's proposed

rules and a determination of whether they are no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Oklahoma's actual implementation of its adopted rules is not the subject of this rulemaking; rather, Oklahoma's implementation of its program is subject to OSM's continuing annual evaluation pursuant to section 521 of SMCRA and the Federal regulations at 30 CFR 733.11.

Oklahoma's proposed rules at §§ 772.12(d) and 772.15(a), respectively, require that (1) a decision on an application for exploration of greater than 250 tons of coal must be based on a complete and accurate application, and (2) except for confidential information all information submitted to the State under section 772 shall be made available for public inspection and copying at the offices of the Department. Oklahoma's proposed rule at § 842.11(c) requires inspections of coal operations that substantially disturb the land as necessary to ensure compliance with the State Program. These proposed rules require Oklahoma to maintain complete and accurate application and inspection information.

Oklahoma's proposed rules are substantively identical to the corresponding Federal regulations at 30 CFR 772.12(d), 772.15(a), and 842.11(c)(3). Therefore, the Director is approving these proposed rules. (See finding No. 1.) For the above reasons, the Director has determined that at this time, no further action is required with regard to these comments.

(c) Coal Exploration on Lands Designated as Unsuitable. NWF further commented that because section 522(e) of SMCRA prohibits surface coal mining and reclamation operations on lands designated as unsuitable for mining by Federal statute, unless there is a determination of valid existing rights (VER), there should be no approval of coal exploration unless there is a prior, clear, and convincing demonstation of VER.

The Federal regulations at 30 CFR 762.14 state that the designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to section 522 of SMCRA and the implementing Federal regulation, does not prohibit coal exploration operation in the area, if such operations are conducted in accordance with SMCRA, the implementing Federal regulations, any approved State or Federal program, and other applicable requirements. These Federal regulations further provide that to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining, exploration operations on lands designated as unsuitable for surface coal mining operations must be approved by the regulatory authority under 30 CFR part 772.

Oklahoma's proposed rule at § 762.14 is substantively identical to the Federal regulation at 30 CFR 762.14. Therefore, the Director is approving the proposed rule. (See finding No. 1.) The adequacy of OSM's "lands unsuitable" regulations, and consequently of substantively identical rules proposed by Oklahoma, is beyond the scope of this rulemaking. The Director has therefore determined that at this time, no further action is required with regard to these comments.

(d) *16⅔ Exemption.* NWF noted that OSM, on December 20, 1989 (54 FR 52092), promulgated revised regulations implementing the exemption, from the definition of surface coal mining and reclamation operations, of coal extraction incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale. (See section 701(28) of SMCRA.)

NWF further commented that Oklahoma's proposed amendment, as revised on December 15, 1989, did not include corresponding rules no less effective than the revised Federal regulations. Furthermore, NWF concluded that Oklahoma's failure to adopt similar rules to OSM's revised regulations (1) conflicts with section 503(a)(7) of SMCRA (which requires States to submit rules and regulations consistent with regulations issued by the Secretary pursuant to SMCRA); and (2) therefore requires the Secretary, pursuant to section 504(a)(3) of SMCRA, to implement a Federal program in Oklahoma.

With respect to the Oklahoma program, the Director agrees, consistent with section 503(a)(7) of SMCRA, that Oklahoma must submit rules no less effective than the revised Federal regulations. As part of his consideration of Oklahoma's proposed amendment, the Director is not approving proposed § 700.11(a)(4) to the extent that it does not include or reference rules implementing the incidental mining exemption. The Director, on February 7, 1990, in accordance with 30 CFR 732.17 (d) through (f), required that Oklahoma submit rules implementing the statutory exemption for the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale. Consistent with the February 7, 1990, 30 CFR part 732 letter, the Director is codifying the same requirement at 30 CFR 936.16(a). (See finding No. 2.)

The Director's required program amendment is consistent with 30 CFR 732.17 which requires that the Director promptly notify State regulatory authorities of all changes in SMCRA and the Secretary's regulations which will require amendments to State programs. In this particular context, i.e., the Director's imposition of a required program amendment, pursuant to 30 CFR 732.17(f)(2), it is only after a State has failed to submit a required amendment that the Director could initiate proceedings under 30 CFR part 733 to either enforce that part of the State program affected, or withdraw approval, in whole or in part, of the State program and implement a Federal program. Therefore, NWF's request that a Federal program be implemented in Oklahoma is premature; fairness and the regulations dictate that prior to the Director exercising this option, Oklahoma first be given an opportunity to respond to the required amendment, and to promulgate rules that are no less effective than the revised Federal regulations.

For the above reasons, the Director has determined (1) that his actions pertaining to this portion of Oklahoma's program are correct and consistent with the relevant portions of SMCRA and the implementing Federal regulations, and (2) that it is not necessary, as NWF suggests, to implement a Federal program in Oklahoma. To the extent, however, that Oklahoma fails to take appropriate action with regard to the Director's required program amendment, the Director will take whatever steps are necessary to ensure compliance with the appropriate provisions of SMCRA and the Federal regulations.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Oklahoma program. Comments were also solicited from various State agencies. No comments were received from the State and Federal agencies.

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), an initial concurrence was solicited and received from the EPA (Administrative Record No. OK–871) for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act. Subsequent to the initial concurrence,

on February 20, 1990 (Administrative Record No. OK–911), EPA qualified its concurrence to the extent that Oklahoma's rules should not be interpreted so as to provide full authorization for instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards as required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. These impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States obtain a permit as appropriate under either section 402 or 404 of the Clean Water Act.

The Director acknowledges that nothing in SMCRA supercedes the requirements of the Clean Water Act. The Director's approval of Oklahoma's proposed rules should not be construed to authorize any actions inconsistent with the Clean Water Act. Additionally, on March 9, 1990, Oklahoma stated that it will not approve any instream treatment activities (Administrative Record No. OK–912).

4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. The SHPO responded that he had no objections to the proposed amendment (Administrative Record No. OK–869). No comments were received from ACHP.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Oklahoma on May 18, 1988, as revised on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989, with the exceptions of (1) the exemption of coal extraction incidental to the extraction of other minerals at § 700.11(a)(4), (2) the definition of "affected area" and "previously mined areas" at § 701.5; (3) the authorization of land surveyors to prepare and/or certify plans for siltation structures, impoundments, and roads at §§ 780.25 (a)(1) and (a)(3)(i), 784.16 (a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a); (4) the standards for revegetation success at §§ 816.116(a)(1), 817.116(a)(1), 816.116(c)(4), and 817.116(c)(4); (5) the correction of material damage resulting from subsidence at §§ 784.20(g)(2) and 817.121(c)(2); (6) the standard for prime farmland restoration at §§ 823.12(a)(1); and (7) the use of civil penalties at § 845.21(b). As discussed in findings Nos. 2, 4, 9, 10, 15, 16, and 18, the Director has determined that the proposed rules specified above are less effective than the Federal regulations and/or less stringent than SMCRA. He is therefore not approving them, and, as discussed in findings Nos. 2, 9, 15, 16, and 18, he is requiring further regulatory program amendments. In addition, as discussed in finding No. 11, the Director is requiring that Oklahoma amend § 800.40(b) (1) regarding bond release inspections. And, as discussed in finding No. 19, the Director is removing the affirmative disapprovals at 30 CFR 936.10(b) (1)–(28). Except as noted, the Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 936 codifying decisions concerning the Oklahoma program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Oklahoma program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Oklahoma of only such provisions.

VI. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review of OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 19, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. By revising the text of § 936.10 to read as follows:

§ 936.10 State program approval.

The Oklahoma State Program, as submitted on February 28, 1980, amended on June 11, 1980, and resubmitted on December 8, 1980, is conditionally approved on January 19, 1981. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone (918) 581–6430.

(b) Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

3. Section 936.15 is amended by adding paragraph (i) as follows:

§ 936.15 Approval of regulatory program amendments.

* * * * *

(i) With the exceptions of (1) § 700.11(a)(4) (exemption of coal extraction incidental to the extraction of other minerals); (2) § 701.5 (definitions of "affected area" and "previously mined areas"); (3) §§ 780.25(a)(1) and (a)(3)(i), 784.16(a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a) (authorization of land surveyors to prepare and/or certify plans for siltation structures, impoundments, and roads); (4) §§ 816.116(a)(1), 817.116(a)(1), 816.116(c)(4), and 817.116(c)(4) (standards for revegetation success); (5) §§ 784.20(g)(2) and 817.121(c)(2) (subsidence control); (6) § 823.12(a)(1) (prime farmland restoration); and (7) § 845.21(b) (use of civil penalty fees), the revisions to the following sections of Oklahoma's permanent regulatory program rules submitted to OSM on May 18, 1988, as revised by Oklahoma on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989, are approved effective March 27, 1990.

700.1–.5, .11–.15
701.1–.5, .11
705.1–.6, .11, .13, .15, .17–.19, .21, .22
707.1, .4, .5, .10–.12
761.1, .3, .5, .11, .12
762.1, .4, .5, .11–.14
764.1, .11, .13, .15, .17, .19, .21, .23, .25
772.1–.3, .11–.16
773.1, .5, .11–.13, .15, .17, .19, .20, .21
774.1, .11, .13, .15, .17
775.1, .11, .13
777.1, .11, .13–.15, .17
778.1, .13–.18, .20, .21
779.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25
780.1, .2, .4, .11–.16, .18, .21–.23, .25, .27, .29, .31, .33, .35, .37, .38
783.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25
784.1, .2, .4, .11–.26, .29, .30, .200
785.1, .2, .13–.15, .17, .18, .20–.22
795.3, .5–.9, .12
800.1, .4, .5, .11–.17, .20, .21, .23, .30, .40, .50, .60
810.1, .2, .4, .11
815.1, .13, .15
816.1, .2, .11, .13–.15, .22, 41–.43, .45–.47, .49, .56, .57, .59, .61, .62, .64, .66–.68, .71–.74, .79, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .104–.107, .111, .113, .114, .116, .121, .122, .131–.133, .150, .151, .180, .181, .200
817.1, .2, .11, .13–.15, .22, .41–.43, .45–.47, .49, .56, .57, .59, .61, .62, .64, .66–.68, .71–.74, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .106, .107, .111, .113, .114, .116, .121, .122, .131–.133, .150, .151, .180, .181, .200
819.1, .11, .13, .15, .17, .19, .21
823.1, .2, .4, .11–.15
824.1, .2, .11
827.1, .11, .12
828.1, .2, .11, .12
842.1, .11–.16
843.1, .5, .11–.18, .20, .22
845.1, .2, .11–.21
846.1, .5, .12, .14, .17, .18
850.1, .5, .12–.15

4. Section 936.16 is added.

§ 936.16 Required regulatory program amendments.

(a) By April 9, 1990, Oklahoma must submit for OSM approval an amendment revising § 700.11(a)(4) to include rules corresponding to 30 CFR 700.11(a)(4) and 30 CFR part 702, or otherwise demonstrate a means of implementing the exemption for coal extraction incidental to the extraction of other minerals where coal does not exceed 16⅔ percent that is no less effective than the revised Federal regulations.

(b) By May 29, 1990, Oklahoma must submit for OSM approval an amendment revising §§ 780.25 (a)(1) and (a)(3)(i), 784.16 (a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a) to remove the authorization of land surveyors to prepare and/or certify plans for siltation structures, impoundments, and roads.

(c) By May 29, 1990, Oklahoma must submit for OSM approval an amendment revising § 800.40(b)(1), or otherwise propose to OSM a means of ensuring that any person with an interest in the bond release will at Oklahoma's discretion on a case-by-case basis be given access to the areas under consideration for bond release.

(d) By May 29, 1990, Oklahoma must submit for OSM approval the Bond Release Guidelines referenced at §§ 816.116(a)(1) and 817.116(a)(1), or otherwise propose to OSM for approval as part of Oklahoma's approved program, standards for revegetation success and statistically valid sampling techniques for measuring vegetation ground cover, production, and stocking.

(e) By April 13, 1990, Oklahoma must submit for OSM approval an amendment revising §§ 816.116(c)(4) and 817.116(c)(4), or otherwise propose to OSM a means of ensuring that any husbandry practices will be approved by the Director of OSM in accordance with 30 CFR 732.17 prior to being approved by the Director of the Oklahoma program.

(f) By May 29, 1990, Oklahoma must submit for OSM approval an amendment revising § 823.12(a)(1), or otherwise propose to OSM a means of ensuring that, in those instances where an operator is not required to separately salvage and store the topsoil of a prime farmland soil, the productive capacity of the reclaimed substituted prime farmland soil will exceed, rather than equal or exceed the productive capacity of the prime farmland soil that existed prior to mining.

(g) By May 29, 1990, Oklahoma must submit for OSM approval an amendment revising § 845.21(b), or otherwise propose to OSM a means of ensuring that, when allocating expenditures of civil penalty fees for reclamation of lands affected by post-August 3, 1977, coal mining practices, before considering allocation of such fees for bond forfeiture sites, priority consideration will be given to reclamation projects that qualify as priority 1 and 2 under section 740 of the Oklahoma Coal Reclamation Act of 1979.

[FR Doc. 90–6901 Filed 3–26–90; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–90–07]

Special Local Regulations for Marine Events; Waterside Beach Party; Elizabeth River, Town Point Park, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Waterside Beach Party to be held at Town Point Park adjacent to "Waterside", at Norfolk, Virginia. The festival will consist of a

two day windsurfing regatta, a high performance in-the-water boat demonstration by offshore racing boats, and a fireworks display launched from the Banana Pier Lot, Town Point Park, with the shells bursting over the water within the regulated area. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life on navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective for the following times and dates: 7 a.m. to 9 p.m., March 24, 1990. 7 a.m. to 6 p.m., March 25, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Norfolk Festevents Ltd. submitted an application dated January 19, 1990 to hold a fireworks display on March 24, 1990 and The Waterside Festival Marketplace submitted an application dated February 13, 1990 to hold a two day windsurfing regatta and a high performance in-the-water boat demonstration by offshore racing boats, as part of the Waterside Beach Party to be held in the "Waterside" area of the Elizabeth River, Town Point, Norfolk and Portsmouth, Virginia.

Since spectator vessels are expected to be in the area for these events, the regulations in 33 CFR 100.501 are being implemented for the event.

The windsurfing regatta will begin each day at the beach in the vicinity of Portsmouth Naval Hospital and involves a triangular course on the Elizabeth River within the regulated area. The offshore racing boat demonstrations will last twenty to thirty minutes per event and be held four times daily in the vicinity of Town Point Park. The fireworks will be launched from the Banana Pier Lot with the shells bursting over the water within the regulated area. Since the waterway will not be closed for extended periods, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: March 19, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90–6833 Filed 3–26–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD1–89–077]

Drawbridge Operation Regulations; Kennebec River, Maine

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Maine Department of Transportation (Maine DOT), the Coast Guard is changing the regulations governing the Carlton drawbridge over Kennebec River, at mile 14.0, between Bath and Woolwich, Maine by extending the evening rush hour, requiring clearance gauges, providing for rail operation and by limiting the openings for recreational vessels, between 6 a.m. and 6 p.m., to 10 a.m. and 2 p.m., from June 1 through September 30, each year. These changes are being made because periods of vehicular traffic have increased and rail service is being reinstituted. This action should accommodate the current needs of vehicular traffic, and still provide for the reasonable needs of navigation.

EFFECTIVE DATES: These regulations become effective on June 1, 1990.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION: On August 2, 1988, the Coast Guard initially published a final temporary rule to limit the bridge openings within 30 minutes of each other and to extend the evening rush hour forty-five minutes for 60 days commencing August 8 through October 6, 1988. The Commander, First Coast Guard District published the proposal as a Public Notice 1–669 dated August 8, 1988. Implementation of the first temporary regulation was conducted after the peak of the boating season which did not permit a complete evaluation of the situation. As a result, State and local officials requested that temporary regulations be promulgated to limiting openings to 10 a.m. and 2 p.m. for recreational vessels for the 1989 boating season and that they be evaluated to determine if the changes would substantially improve vehicular traffic without restricting marine traffic. On May 10, 1989 a proposed temporary rule (54 FR 20149) was issued under 33 CFR 117.43 to evaluate suggested changes to the drawbridge regulations. The Commander, First Coast Guard District, published this proposal as a Public Notice 1–687 dated May 9, 1989. In each notice, interested persons were given until May 25, 1989 to submit comments. On June 22, 1989, a final temporary rule (54 FR 26197) was issued for the period June 1 through July 30, 1989 and published in Public Notice 1–690 dated June 1, 1989. Because the temporary regulation did not permit adequate time to evaluate the proposal, the Coast Guard, on July 26, 1989, published a notice of proposed rules and notice of public hearing in the **Federal Register** (54 FR 31060) concerning this amendment. An additional 60 day temporary regulation (54 (FR 31028) was issued for the period July 31 through September 28, 1989. The Commander, First Coast Guard District, published the proposal and temporary regulation as Public Notice 1–693 dated July 24, 1989. In each instance, interested persons were given until September 30, 1989 to submit comments.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., Project Officer, and Lieutenant John Gately, Project Attorney.

Discussion of Comments

The public hearing held at Bath City Hall Auditorium, in Bath, Maine on August 24, 1989, had 16 attendees with nine speakers. Six speakers had comments favoring the regulations, one opposed, one commercial sailboat mariner offered qualified support and one person declined to speak. Additionally, five written comments

were received in response to the comment period ending September 30, 1989. Of the written comments received four favored and one opposed the proposed regulation. The comments in favor, from both the public hearing and written comments noted improvement in the flow of summertime traffic while acknowledging the magnitude of the vehicular traffic flow problems created by the narrow two-lane bridge and a need for another bridge. The dissenting comment, for both the public hearing and written comments, asserted that the openings for limited amount of large recreational traffic are not the cause of the traffic problems. On November 6, 1989, Maine DOT submitted information regarding vehicular traffic counts, bridge openings records, police accident study and drawtenders daily logs for the period June 1, 1989 through September 30, 1989. The traffic counts indicated that between 9 a.m. and 10 a.m. and from 1 p.m. to 2 p.m. the average daily traffic for northbound traffic on the bridge to be 430 and 560 vehicles, respectively. Southbound traffic average was 510 and 542 vehicles. The highest daily average for north and south bound traffic was recorded to be 868 vehicles from 4 p.m. to 5 p.m. and 726 vehicles from 6 a.m. to 7 a.m., respectively. The drawtenders log indicated 21 openings at the bridge from August 5 through September 27, 1989. These logs identified only four recreational vessel requests for openings from 6 a.m. to 6 p.m. Upon being informed of the temporary regulations, the mariner on one occasion did not transit the bridge, one vessel was delayed 45 minutes, the third vessel was delayed 2¾ hours and the last passed without delay. The police accident study recorded eight accidents that occurred during the period of July 31, 1989 through September 28, 1989 on the Carlton Bridge or its ramps and approaches. Seven of the eight accidents occurred during daylight hours and seven were "rear end" type accidents involving a lead car stopping or slowing and the car or cars behind striking the rear of the car in front. A significant number of accidents occurred at intersections and on streets in the general vicinity of but not on Route 1 or the Carlton bridge. None of the accidents recorded appeared at the time of or were related to the opening and closing of the bridge.

The general consensus of residents of the area agree that the Carlton bridge/Route 1 is a heavily travelled scenic shore route for tourists. Route 1 goes from four lanes down to two lanes as it crosses the Carlton Bridge. This in itself creates traffic congestion. The Bath Iron Works (BIW), located in Bath, Maine, employs eight thousand workers for two shifts. BIW workers, each shift, exiting and entering BIW, cause additional back-ups crossing the bridge in either direction. Based on information from Maine DOT, the regulation has been modified to reflect provisions for the railroad service which is expected to start operations in July 1990.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The regulation will not prevent the passage of vessels but just require scheduling of movements to permit both vehicular and marine traffic to utilize the bridge. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499: 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.525 is revised to read as follows:

§ 117.525 Kennebec River.

(a) The draw of the Carlton (US 1) highway-railroad bridge, mile 14.0 between Bath and Woolwich shall open as follows:

(1) On signal as soon as possible at all times for vessels owned or operated by the United States Government, State and local vessels used for public safety, vessels in distress, and inbound loaded commercial fishing vessels.

(2) Year-round the draw need not open from 6:30 a.m. to 7:30 a.m. and from 3:45 p.m. to 5:30 p.m. Monday to Friday excluding holidays except for vessels noted in paragraph (a)(1) of this section.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) From June 1 through September 30:

(i) On signal at all times for commercial vessels except as noted in paragraph (a)(2) of this section;

(ii) For recreational vessels on signal except that from 6 a.m. to 6 p.m. need open only at 10 a.m. and 2 p.m., except as noted in paragraph (a)(1) of this section.

(5) From April 15 through May 30, and October 1, through November 15, open on signal:

(i) From 3 a.m. to 7 p.m., except as noted in paragraph (a)(2) of this section;

(ii) From 7 p.m. to 3 a.m. if four hours notice is given, except as noted in paragraph (a)(1) of this section.

(6) From February 15 through April 14 and November 16 through December 15 at all times on signal, except as noted in paragraphs (a)(1) and (a)(2) of this section, if at least four hours notice is given.

(7) From December 16 through February 14 open on signal, except as noted in paragraphs (a)(1) and (a)(2) of this section, if 24 hours notice is given.

(b) The owners of Carlton (US 1) bridge shall provide and keep in good legible condition clearance gauges for the draw and the designated navigable fixed span with figures not less than 18 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Dated: March 16, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 90–6831 Filed 3–26–90; 8:45am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3744-8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

AGENCY: Notice of final rulemaking.

SUMMARY: USEPA is approving a submission by the State of Wisconsin as a revision to the Wisconsin State Implementation Plan (SIP) for Sulfur Dioxide (SO_2). The revision consists of the addition of Natural Resources (NR) 418.08 of the Wisconsin Administrative Code, Rothschild Reasonably Available Control Technology (RACT) Sulfur Limitations, to the Wisconsin SIP. The revision sets SO_2 emission limits for sources in the City of Rothschild and the Town of Weston, which are located in Marathon County, Wisconsin, and is Wisconsin's SO_2 plan for these two areas.

EFFECTIVE DATE: This final rulemaking becomes effective on April 26, 1990.

ADDRESSES: Copies of this SIP revision to the Wisconsin SIP are available for inspection at:

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

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan at (312) 886-6031 before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1984, the Wisconsin Department of Natural Resources (WDNR) requested that USEPA revise the air quality attainment status designations for several areas in Marathon County (the City of Rothschild, part of the Towns of Weston and Rib Mountain) from attainment to primary and secondary nonattainment of the SO_2 National Ambient Air Quality Standards (NAAQS). This request was based on modeling and monitoring data that showed violations of the primary and secondary NAAQS in these three areas. Modeling results were used by the WDNR to determine the boundaries of the nonattainment areas, and these boundaries were submitted with the redesignation request.

On October 9, 1985 (50 FR 41139), USEPA designated the City of Rothschild as primary and secondary nonattainment for SO_2, and part of the Towns of Weston and Rib Mountain as secondary nonattainment for SO_2, under section 107 of the Clean Air Act. In that notice of final rulemaking, USEPA stated that the State of Wisconsin had 1 year to develop and submit a SIP revision meeting the requirements contained in section 110 and part D of the Clean Air Act, pursuant to sections 171-77 of the Clean Air Act, 42 U.S.C. 7501-07, for the Rothschild, Weston, and Rib Mountain SO_2 nonattainment areas. USEPA also stated that, to obtain approval, the plans must provide for attainment of the SO_2 NAAQS as expeditiously as practicable, but no later than October 1, 1990.[1]

On January 28, 1985, the WDNR submitted section NR 418.08 of the Wisconsin Administrative Code, Rothschild RACT Sulfur Limitations, as a revision to the Wisconsin SO_2 SIP. Additional information pertaining to the revision was submitted on November 18, 1985, January 14, 1986, and June 24, 1986. The revision is identified as Natural Resources Board Order A-10-84, and sets emission limits for sources in the City of Rothschild and the Town of Weston, specifically the Weyerhaeuser Paper Company and the Reed-Lignin Company, respectively, which are the major SO_2 sources impacting the Rothschild area. This SIP revision does not set emission limits for the Town of Rib Mountain, which is impacted by the Weston Power Plant, because:

(1) The Rib Mountain secondary nonattainment area is geographically separate from the Rothschild and Weston nonattainment areas and (2) the emissions from the Weston Power Plant do not impact the City of Rothschild or the Town of Weston. The emission limits for the Town of Rib Mountain are being prepared in conjunction with a new Wisconsin statewide SO_2 Rule, which USEPA will address in a separate rulemaking action.

The Rothschild SO_2 SIP revision sets a compliance schedule for meeting the emission limits, with compliance to be based on the current SIP test method (i.e., stack test). Although, the WDNR submitted a compliance plan for Reed-Lignin on November 18, 1985, and a compliance plan for Weyerhaeuser on January 14, 1986, these plans will not be included in the SIP. The emission limits and compliance schedule requirements are contained in Wisconsin's Rule NR 418.08(1), Natural Resources Board Order Number A-10-84.

In a December 27, 1988, **Federal Register** notice (53 FR 52202), USEPA proposed to approve the SO_2 emission limits for sources in the City of Rothschild and the Town of Weston. During the 30-day public comment period, the Natural Resources Defense Council requested and was granted an extension to the public comment period. However, neither it, nor anyone else, submitted comments on this revision.

Rothschild SO_2 SIP Revision

Section NR 418.08(a) will modify the SIP to limit SO_2 emissions from any pulp, paper, or pulp and paper mill and from any calcium-based spent sulfate liquor processing facility in the City of Rothschild and the Town of Weston. At present, there are only two such facilities, the Weyerhaeuser Paper Company, a pulp and paper mill, and the Reed-Lignin Company, a sulfate liquor processing facility, located in the City of Rothschild and the Town of Weston.

The Weyerhaeuser emission limits include the following sources: fossil fuel-fired boilers, pulp digester, acid towers (including when being loaded with stone), and all other sources. These are given below:

Source	Emission limit
Fossil fuel-fired boiler	0.52 lbs SO_2.
Fossil fuel-fired boiler which can also burn wood.	0.025 lbs SO_2/MMBTU.
Pulp digester	4,050 lbs SO_2/3 hrs. 16,200 lbs SO_2/24 hrs.
Acid tower being loaded with stone.	52 lbs SO_2/day during which stone is loaded.
Acid tower not being loaded, acid plant vent, and Kimberly Clark contact cooler.	16.0 lbs SO_2/hr.
From all other sources	0.2 lbs SO_2/hr.

The emission limits for Reed-Lignin, as incorporated into the Wisconsin Administrative Code, are as follows:

[1] For a discussion of the requirements for newly discovered nonattainment areas, such as Marathon County was when it was redesignated, see "Guidance Document for Correction of Part D SIP's for Nonattainment Areas," January 27, 1984, Office of Air Quality Planning and Standards, USEPA, Research Triangle Park, North Carolina, prepared as a supplement to the "Policy for Correction of Part D SIP's for Nonattainment Areas" (November 2, 1983; 48 FR 50686-50697).

Source	Emission limit
Evaporator with emission point equal to or greater than 87 feet above ground.	16.2 lbs SO_2/hr.
Evaporator with emission point less than 87 feet above ground.	10.6 lbs SO_2/hr.
From all other sources	4.0 lbs SO_2/hr.

WDNR has informed USEPA that Reed-Lignin is planning to increase the evaporator stack height to 87 feet from 54.5 feet; and, thus, the State of Wisconsin has only submitted technical support for the 16.2 lbs of SO_2/hour emission limit with an emission point of 87 feet or more. Therefore, USEPA is approving the 16.2 lbs of SO_2/hour emission limit. USEPA is not approving the 10.6 lbs of SO_2/hour because it no longer reflects the intent of either WDNR or the sources.

The State's attainment demonstrations were based on modeling results using the Industrial Sources Complex (ISC) model, and 5 years (1973–1977) of meteorological data from the National Weather Service Stations in Wausau and Green Bay.[2] The determination was based on a block average interpretation of the SO_2 NAAQS. USEPA reviewed the State's technical support document which was submitted to USEPA with the SIP revision request and determined that limiting the SO_2 emissions from Weyerhaeuser and Reed-Lignin will ensure attainment of the SO_2 NAAQS in the Rothschild nonattainment area.[3]

USEPA has also reviewed the compliance schedule and the compliance plans submitted by each of the sources. The compliance schedule identified at NR 418.08(2) sets final compliance dates for each of the sources identified at NR 418.08(a). USEPA is approving this timetable because it is consistent with USEPA policy and the Clean Air Act. Compliance with the revised regulations will be based on the current federally approved SIP test method (i.e., stack test).

[2] The modeling techniques used in the demonstration supporting this revision are based on modeling guidance in place at the time that the analysis was performed, i.e., the USEPA "Guideline on Air Quality Models" (1978). Since that time, revisions to modeling guidance have been promulgated by USEPA, i.e., "Guideline on Air Quality Models (Revised)" 1986 and "Supplement A to the Guideline on Air Quality Models (Revised)" 1986 and "Supplement A to the Guideline on Air Quality Models (Revised)" 1987. Because the modeling analysis was completed prior to promulgation of the revised guidance, USEPA accepts the analysis.

[3] Emission limits for the Weston Power Plant (Rib Mountain nonattainment area) will be established as part of the Wisconsin Statewide SO_2 Rule.

On July 8, 1985, (50 FR 37892), USEPA promulgated Stack Height Rules pursuant to section 123 of the Clean Air Act, as amended. The Rothschild SO_2 SIP revision was reviewed in light of the new stack height rule, as well as subsequent guidance pertaining to the new rule. USEPA has determined that there are no stack height issues in this SIP revision, because neither source emits more than 5,000 tons per year.

USEPA has also reviewed this action with respect to the Prevention of Significant Deterioration regulations. Since the SO_2 baseline date has not been triggered for Marathon County, there is no need to assess increment consumption from minor sources. In addition, this rule reduces the emissions of SO_2 in the County.

Summary

1. USEPA is approving the addition of the Rothschild RACT Sulfur Limitations, NR 418.08 of the Wisconsin Administrative Code, to the Wisconsin SO_2 SIP. These limits pertain to two sources, the Weyerhaeuser and the Reed-Lignin Companies. USEAP is approving the emission limits presented above for both companies, with one exception.

A. USEPA is approving the 16.2 lbs of SO_2/hour emission limit for the evaporators at Reed-Lignin.

B. USEPA is not approving the 10.6 lbs of SO_2/hour emission limit for evaporators at Reed-Lignin because the source has raised its stack, and the emission limit is no longer relevant.

2. USEPA is approving the compliance schedule and compliance plan requirements set forth in the rule because they are consistent with the Clean Air Act's requirements.

3. USEPA is approving Wisconsin's SO_2 plan for the City of Rothschild and the Town of Weston, which are located in Marathon County.

USEPA is approving NR 418.08 because this revision meets the requirements of part D of the Clean Air Act, 42 U.S.C. 7501–7508. The Wisconsin SIP, however, contains additional existing requirements for SO_2. Today's action on NR 418.08 has been integrated within Wisconsin's existing SIP regulations, and does not eliminate a source's obligation to comply with all existing SO_2 SIP requirements.

Specifically, today's action in no way affects the terms and conditions of a Federal Consent Decree entered into by USEPA and the Weyerhaeuser Company located in Rothschild, Wisconsin, No. 89–C–0973–C (W.D. Wis., file November 1, 1989). This Consent Decree resolves USEPA's enforcement action against Weyerhaeuser Company for violations of SIP rule NR 154.12(1) (now recodified as 418.08). In that Decree, Weyerhaeuser committed to comply with NR 154.12(1) by installing a desulfurization scrubber. On August 15, 1989, the WDNR issued a construction permit to Weyerhaeuser which limits the combined emissions for Weyerhaeuser's acid plant and desulfurization scrubber to 28 pounds of SO_2 per hour. The conditions and terms of this construction permit and of the Consent Decree remain federally enforceable.

On May 9, 1987, 18 months past the effective date of USEPA's designation of Marathon County as a primary SO_2 non-attainment area (October 9, 1985, (50 FR 41139)), a construction moratorium was imposed in Marathon County under section 110(a)(2)(I) of the Clean Air Act because the county did not have a USEPA-approved plan which assured the attainment and maintenance of the SO_2 NAAQS. However, USEPA's final approval of Rothschild's SO_2 SIP will lift the section 110(a)(2)(I) construction ban in Marathon County.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 29, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur dioxide, Incorporation by reference, Intergovernmental office.

Note.—Incorporation by reference of the SIP for the State of Wisconsin was approved by the Director of the **Federal Register** on July 1, 1981.

Authority: 42 U.S.C. 7401–7642.

Dated: January 9, 1990.

Basil G. Constantelos,

Acting Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of the Federal Regulations, Chapter 1, 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.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(55) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(55) On January 28, 1985, Wisconsin submitted its Rothschild (Marathon County) SO_2 plan, which contains emission limits for sources in the City of Rothschild and the Town of Weston, specifically for the Weyerhaeuser Paper Company and the Reed-Lignin Company, respectively. USEPA is approving NR 418.08 because this revision meets the requirements of part D of the Clean Air Act, 42 U.S.C. 7501–7508. The Wisconsin SIP, however, contains additional existing requirements for SO_2. Today's action on NR 418.08 has been integrated within Wisconsin's existing SIP regulations, and does not eliminate a source's obligation to comply with all existing SO_2 SIP requirements. Specifically, today's action in no way affects the terms and conditions of a Federal Consent Decree entered into by USEPA and the Weyerhaeuser Company located in Rothschild, Wisconsin No. 89–C–0973–C (W.D. Wis., filed November 1, 1989). This Consent Decree resolves USEPA's enforcement action against Weyerhaeuser Company for violations of SIP rule NR 154.12(1) (now recodified as 418.08). In that Decree, Weyerhaeuser committed to comply with NR 154.12(1) by installing a desulfurization scrubber. August 15, 1989, the WDNR issued a construction permit to Weyerhaeuser which limit the combined emissions of Weyerhaeuser's acid plant and desulfurization scrubber to 28 pounds of SO_2 per hour. The conditions and terms of this construction permit and of the Consent Decree remain federally enforceable. On May 9, 1987, 18 months past the effective date of USEPA's designation of Marathon County as a primary SO_2 non-attainment area (October 9, 1985, (50 FR 41139)), a construction moratorium was imposed in Marathon County under section 110(a)(2)(I) of the Clean Air Act because the county did not have a USEPA approved plan which assured the attainment and maintenance of the SO_2 NAAQS. However, USEPA final approval of Rothschild's SO_2 SIP will lift the section 110(a)(2)(I) construction ban in Marathon County.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, Natural Resources 418.08, Rothschild RACT sulfur limitations, as published in the (Wisconsin) Register, September, 1986, number 369, effective October 1, 1986.

(ii) Additional information.

(A) Weyerhaeuser Company, Federal Consent Decree No. 89–C–0973–C (W.D. Wis., filed November 1, 1989).

[FR Doc. 90–6917 Filed 3–26–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 228

[FRL–3749–4]

Ocean Dumping; Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates two new dredged material disposal sites located in the Gulf of Mexico offshore of Freeport Harbor, Texas. One site is for the one time disposal of 5.1 million cubic yards (mcy) of construction material; the other site is for the disposal of 2.1 mcy of future maintenance material dredged annually from the expanded and relocated Freeport Harbor Entrance and Jetty Channels. This action is necessary to provide acceptable ocean dumping sites for the disposal of material from the Army Corps of Engineers 45-Foot Project at Freeport Harbor, Texas. This final site designation is for an indefinite period of time, and is subject to continued monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective April 26, 1990.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. E.P.A., 1445 Ross Avenue, Dallas, Texas 75202–2733.

The file supporting this designation and the letters of comment are available for public inspection at the following locations: EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202–2733, Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas, 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with its ocean dumping site designations (39 CFR 16186, May 7, 1974).

EPA has prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Freeport Harbor, Texas (45-Foot Project) Ocean Dredged Material Disposal Site Designation." On January 12, 1990, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register**. The public comment period of this Final EIS closed on February 12, 1990. Two letters concerning the Final EIS were received. The Public Health Service sent a "no comment" letter. The second letter was sent by the Sierra Club, Lone Star Chapter. The Sierra Club considered the Final EIS to be unacceptable stating that the alternatives analysis was inadequate and the purpose and use was confused. The Sierra Club also stated that the consideration of cost in site selection was inappropriate and that the Draft EIS was not adequately distributed to

environmental groups. In response to these comments, EPA provides the following information. EPA agrees that the Final EIS includes only a summary of the alternatives evaluated. As described in the Preface, the Final EIS must be viewed along with the Draft EIS for a complete environmental overview. EPA believes that the alternative analysis described in detail in the Draft EIS and summarized in the Final EIS is adequate. EPA's purpose and need was clearly stated in Chapter 1 of the Draft EIS. Site designation by EPA does not authorize any dredging project nor permit disposal of any dredged material. In designating ocean disposal sites, EPA is providing acceptable locations should ocean disposal be the preferred disposal option for a particular dredging project. Site designation in itself does not preclude the consideration of other disposal options. The determination of feasibility for selecting an acceptable site is based on many factors, of which cost is one. EPA believes that the Draft EIS was adequately distributed. Approximately 30 agencies and organizations, 11 of which were environmental groups, were sent copies of the Draft EIS for review and comment.

The action discussed in the EIS is designation of two ocean disposal sites for dredged material. The purpose of the designation is to provide environmentally acceptable locations for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. The general alternatives examined were the no action alternative; upland disposal; and ocean disposal, including a mid-shelf site, a continental slope site, and three near-shore sites. The existing, historically-used site was one of the near-shore sites evaluated. The no action alternative would require the Corps to develop an alternative disposal method (e.g., land based) or modify or cancel the project. The no action alternative was not considered feasible. Upland disposal was determined not practicable because there are not sufficient upland sites available to accommodate both the virgin and maintenance material from the 45-Foot Project.

The mid-shelf and continental slope alternatives were not considered feasible because of safety and economic considerations, limits on monitoring and surveillance, and the lack of any environmental benefits by utilizing sites that far offshore.

Ocean disposal sites were identified by determining a zone of siting feasibility (ZSF) and then screening out those sites which impacted biologically sensitive areas, beaches and recreational areas, the navigation channel, cultural or historical resources, etc.

Evaluation of the historically-used disposal site, which has been utilized by the Corps for disposal of routine maintenance material, showed the site to be located in the biological buffer zone area. Also the grain-size regime was inappropriate for disposal of the construction material. Because of these reasons the existing, historically-used site is not being proposed for designation.

Based on comments received from the National Ocean Service on the Draft EIS, the virgin material disposal site has been moved 3000 feet shoreward in order to avoid impacts to existing oil and gas platforms. It is located in the 55-foot isobath and in the silty-clay regime. The size of the virgin material disposal site was determined, based on models of the ocean discharge of dredged material, to be 5,280 feet in a direction parallel to the Channel (northwest/southeast) and 11,380 feet in a direction perpendicular to the Channel (northeast/southwest). The maintenance material disposal site is located in a silty-sand regime closer to shore. The size of the maintenance material site is 4,500 feet parallel to the Channel and 12,500 feet perpendicular to the Channel.

In accordance with the requirements of the Endangered Species Act, as amended, EPA completed a biological assessment and determined that no adverse impacts on listed endangered or threatened species would result from site designation. The National Marine Fisheries Service has concurred with this determination. This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for federal actions subject to NEPA.

C. Site Designation

On March 13, 1989, EPA proposed designation of the Freeport Harbor (45-Foot Project) disposal sites. The public comment period on this proposed rule closed on April 27, 1989. No comments were received on the proposed rule. The virgin material disposal site is located about six miles from the coast and occupies an area of 2.64 square nautical miles. The coordinates of the site are as follows:

28°50'51" N, 95°13'54" W; 28°51'44" N, 95°14'49" W;
28°50'15" N, 95°16'40" W; 28°49'22" N, 95°15'45" W;

The maintenance material disposal site is located about three miles from the coast and occupies an area of 1.53 square nautical miles. The coordinates of the site are as follows:

28°54'00" N, 95°15'49" W; 28°53'28" N, 95°15'16" W;
28°52'00" N, 95°16'59" W; 28°52'32" N, 95°17'32" W;

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the continental shelf are chosen. If disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft and Final EISs, that the disposal sites are acceptable under the five general criteria. A Continental Shelf location is not feasible and no environmental benefits would be obtained by selecting such a site. The characteristics of the proposed sites are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast* (40 CFR 228.6(a)(1)). The geographical positions of the sites are given above. The water depth at the site for the construction material is from 54 to 61 feet; the topography is flat; and the site is located about six miles from the coast at its closest point. The water depth at the site for the maintenance material ranges from 31 to 38 feet; the topography is flat; and the site is located about three miles from shore at its closest point.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases* (40 CFR 228.6(a)(2)). At the southeast border of the ZSF, there is a white shrimp breeding area, a sport and commercial fishing harvest area, and a reef area. At the northeast border, there is a small collection of coral heads

(reefs), providing habitat which improves fishing. This area and the jetties, plus buffer zones are excluded from consideration. Also excluded are lighted platforms and non-submerged shipwrecks which improve fishing.

3. *Location in relation to beaches and other amenity areas* (40 CFR 228.6(a)(3)). The virgin and maintenance material disposal sites are roughly six miles and three miles, respectively, from beaches or other amenity areas.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).) Virgin construction material (5.1 mcy) only will be discharged into the virgin material disposal site. Only maintenance dredged material from the Freeport Harbor Entrance and Jetty Channels will be disposed in the maintenance material disposal site. Historically, an average of one mcy/yr is dredged from the channel at roughly ten-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline. With the proposed modifications, it is anticipated that future maintenance material will equal 2.1 mcy annually.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6 (a)(5).) The proposed sites are amenable to surveillance and monitoring. The proposed monitoring and surveillance program for the virgin material site consists of: (1) A method for recording the location of each discharge; (2) bathymetric surveys; and (3) grain size analysis, sediment chemistry characterization and benthic infaunal analysis at selected stations. For future maintenance material, the program consists of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).) Predominant longshore currents, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site. Both proposed disposal sites were sized on the basis of modeling of short-term transport.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).) The discussion of the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area concluded that there were no indications of water or sediment quality problems in the ZSF, including the proposed sites. Testing of past maintenance material indicates that it was acceptable for ocean disposal under 40 CFR part 227. Studies of the benthos at the existing site and nearby areas have not indicated any significant decrease or change in composition of the benthos.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).) Legitimate uses of the ocean which are pertinent to the Freeport disposal areas are shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites. The proposed sites were selected so that their use would not interfere with other legitimate uses of the ocean since the alternative screening process was designed to prevent the selection of sites which would interfere. Disposal operations in the past have not interfered with other uses.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).) Monitoring studies indicated only short-term water column perturbations or turbidity, and perhaps Chemical Oxygen Demand (COD), have resulted from disposal operations. No short-term sediment quality perturbation could be directly related to disposal operations. In general, the water and sediment quality is good throughout the ZSF, including the historically-used disposal site. This indicates that there have been no long-term impacts on water and sediment quality. There also appear to be no long-term impacts on the benthos at the existing site.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(1).) With a disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. The disposal of virgin or maintenance material in the past has not, and disposal of the proposed material should not, attract or promote the development or recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).) The nearest site of historical importance to the virgin material disposal site is approximately 1.0 mile away from the edge of this site in a cross-current direction. For the maintenance material site, the nearest site of historical importance is roughly 1.2 miles from the edge of the site in a cross-current direction. Therefore, use of the proposed sites would not adversely impact known sites of historical importance.

E. Action

Based on the completed EIS process, EPA concludes that the two new Freeport Harbor (45-Foot Project) sites may appropriately be designated for use. The sites are compatible with the five general criteria and eleven specific factors used for site evaluation. The designation of the Freeport Harbor (45-Foot Project) disposal sites as EPA approved ocean dumping sites is being published as final rulemaking.

Before ocean dumping of dredged material at the sites may occur, the Corps of Engineers must evaluate the project according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: March 20, 1990.

Robert E. Layton, Jr.

Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

Part 228 [Amended]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a) (3) the entry for Freeport Harbor, Texas and adding paragraph (b) (76) and (77) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(76) Freeport Harbor New Work (45-Foot Project), Texas—Region 6

Location:

28°50'51" N, 95°13'54" W; 28°51'44" N, 95°14'49" W;

28°50'15" N, 95°16'40" W; 28°49'22" N, 95°15'45" W.

Size: 2.64 square nautical miles.

Depth: 54 to 61 feet.

Primary Use: Construction (new work) dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Freeport Harbor Entrance and Jetty Channels, Texas.

(77) Freeport Harbor Maintenance (45-Foot Project), Texas—Region 6

Location:

28°54'00" N, 95°15'49" W; 28°53'28" N, 95°15'16" W;

28°52'00" N, 95°16'59" W; 28°52'32" N, 95°17'32" W.

Size: 1.53 square nautical miles.

Depth: 31 to 38 feet.

Primary Use: Maintenance dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Freeport Harbor Entrance and Jetty Channels, Texas.

[FR Doc. 90-6921 Filed 3-26-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3749-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion, from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, for a specific waste located at the Boeing Commercial Airplane Company, Auburn, Washington. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: March 27, 1990.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, S.W. (Room M2427, Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-BAEF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to allow EPA to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it is listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of This Rulemaking

Boeing Commercial Airplane Company (Boeing), located in Auburn, Washington, petitioned the Agency to exclude from hazardous waste control a volume of soil contaminated by a specific waste that Boeing generates. After evaluating the petition, EPA proposed, on December 2, 1988, to exclude Boeing's contaminated soils from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 53 FR 48655).

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

A. Boeing Commercial Airplane Company, Auburn, Washington

1. Proposed Exclusion

Boeing petitioned the Agency to exclude its residually-contaminated soils remaining after the excavation of a sludge pile and soils containing EPA Hazardous Waste No. F006. Boeing based its petition on the claim that the previous management of F006 wastes at this site did not leave significant quantities of contaminants in the underlying soil, and that the constituents of concern that were present in the soil were in an essentially immobile form.

To support its claim that both the non-listed constituents of concern are not present in the soils above levels of concern, Boeing submitted (1) results from total constituent analyses for all the EP toxic metals, nickel, and cyanide; (2) results from EP toxicity analysis for all the EP toxic metals, nickel, and cyanide; (3) and results from total constituent analyses for the EPA priority pollutants and formaldehyde.

The Agency evaluated the information and analytical data provided by Boeing in support of its petition and tentatively determined that the hazardous constituents found in the petitioned soils would not pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model and Organic Leachate Model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned soils. The Agency also evaluated ground-water monitoring information submitted in support of Boeing's petition. Based on these evaluations, the Agency tentatively determined that the constituents in Boeing's petitioned soils would not leach and migrate at

concentrations above the health-based levels used in delisting decision-making. See 53 FR 48655, December 2, 1988, for a more detailed explanation of why EPA proposed to grant Boeing's petition for its residually-contaminated soils.

2. Agency Response to Public Comments

The Agency received public comments from two interested parties. One commenter made three minor corrections to clarify the Agency's facility description contained in the proposed rule. The second commenter disagreed with the Agency's proposed decision for a number of reasons. The comments submitted related to the following areas: (1) Use of the VHS model to evaluate the petitioned soils, (2) the relationship to the Agency's standards for clean closure (or closure by removal) of hazardous waste units (see 40 CFR 265.258(a)), and (3) concerns regarding the detection limits reported by Boeing for various metals. (See 52 FR 8704 (March 19, 1987) for a discussion of EPA's policy regarding clean closure.) The specific comments made by these interested parties regarding the Agency's proposed decision to exclude Boeing's petitioned soils, and the Agency's responses to them, are discussed in the remainder of this section.

a. *Clarification of Information in the Proposed Exclusion.* The first commenter provided corrections to errors in the text and tables of the proposed rule. The commenter pointed out that, contrary to the facility description in the proposal, no treatment was conducted in the facility lagoons, but was instead conducted elsewhere in the rinsewater treatment plant. (These lagoons, which were not part of the petition, were clean closed after the petition was submitted.)

The commenter also indicated that, although the excavation area was intended to be filled with clean materials, the clean road and berm soils sampled in the petition were not intended for this ultimate use. The commenter also wanted to clarify that the Agency's assertion that these soils may provide a basis for comparison with the residually-contaminated bottom soils was not proposed by the petitioner. Lastly, a typographical error appeared in the proposed rule in Table 3—Maximum Ground-water Concentrations, Sludge Pile Area (mg/l). The footnote to the column heading for well "SP–1" (denoting the upgradient well) should have been placed instead on the column heading for well "SP–4". These corrections are editorial in nature and do not alter the Agency's evaluation of Boeing's petition.

b. *Use of the VHS Model to Evaluate the Petitioned Soils.* The second commenter claimed that the petitioner had failed to demonstrate, in regard to two factors, that the underlying soils would not pose a risk to human health or the environment. Specifically, the commenter is concerned that the Agency's use of the VHS model does not sufficiently address the potential for hazardous constituents to migrate into the environment or the plausible types of improper management of the petitioned soils.

The Agency recognizes that the commenter, in part, is concerned about the apparent lack of regulatory controls should the residually-contaminated soils be delisted. (The Agency discusses the implications of this scenario and the commenter's specific concerns in the following subsection.) Nevertheless, the Agency believes that its use of the VHS model to evaluate the petitioned soils does address the potential for hazardous constituents to migrate into the environment and plausible types of improper management. At present, Boeing's petitioned soils are managed in its sludge containment area, the area where the F006 sludge pile previously existed before excavation. If the petitioned soils were to remain in place, the major exposure route of concern for the hazardous constituents present in the petitioned soils would be through the ingestion of contaminated ground water. As described in the December 2, 1988 proposed rule, the Agency evaluated the impact of the petitioned soils via this exposure route using the VHS model (see 53 FR 48655).

Alternatively, Boeing may choose to use the former sludge pile containment area to manage other solid wastes generated at or managed by Boeing. Under this scenario, the delisted waste would be subject to the same regulation that affects other industrial solid waste under the state solid waste program. In this case also, the major exposure route of concern for the hazardous constituents present in the petitioned soils would be through ingestion of contaminated ground water. The Agency believes that its use of the VHS model is appropriate for this scenario.

Furthermore, Boeing may also choose to excavate additional soils from the containment area and dispose of these soils in an on-site or off-site Subtitle D landfill setting. Again, the major exposure route of concern for the hazardous constituents present in the petitioned soils would be through the ingestion of ground water impacted by the unit alternately chosen for waste disposal. The Agency's use of the VHS landfill model is also appropriate to evaluate the impact of the petitioned soils under this scenario. Thus, under any of the scenarios described, the VHS model addresses the potential for hazardous constituents to migrate into the environment (*i.e.*, the commenter's first concern).

In response to the commenter's concern regarding the use of the VHS model to model plausible types of improper management of the petitioned soils, EPA notes that the VHS model was specifically developed to model a reasonable worst-case disposal scenario (*i.e.*, the VHS model is conservative in its estimation of constituent concentrations at the receptor well). The VHS model is a landfill model; it considers three basic steps: (1) Generation of a leachate from the landfilled waste, (2) migration of the leachate to the underlying aquifer, and (3) migration of the contaminated ground water in the aquifer to a nearby receptor well. The VHS model evaluation relies on waste-specific information from an appropriate leaching test or leaching estimation method to predict the concentration of constituents in the waste leachate entering the underlying aquifer (steps 1 and 2). These leaching "methods" are based on the assumption that the waste will be disposed in a municipal landfill that receives predominately municipal waste (*e.g.*, codisposal of 95 percent municipal waste and 5 percent industrial waste) and as a result the waste will be exposed to an acidic leaching medium. (The acidic leaching medium is generated predominately by the non-industrial material within the landfill.) Because the leaching "methods" assume an acidic leaching medium, the VHS model inherently incorporates this assumption. Thus, even if a situation exists where wastes are disposed of in a monofill, the VHS model assumes that an acidic leaching medium would be present. This is one example of a conservative measure that was built into the VHS model during its development.

In developing the VHS model for use in delisting petition evaluations, the Agency selected model parameters (*e.g.*, disposal unit size, distance to well) such that the model would provide a reasonable worst-case estimate of constituent concentrations at the receptor well. The VHS model also does not take into account degradation of hazardous constituents; the model assumes that the concentration of a constituent in the waste leachate is equal to the concentration of the constituent entering the underlying aquifer. In addition, the VHS model

assumes that the disposal unit is directly upgradient from the receptor well and that the receptor well is situated, within the contaminant plume, to receive the highest concentration of a contaminant. (See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters.) Finally, the VHS model does not assume the presence of any engineered barriers or special waste management practices which might be present at an actual waste disposal site. For these reasons, the Agency believes that the VHS model is an appropriate evaluation tool for Boeing's petitioned soils, especially with regard to the commenter's second concern regarding plausible types of improper management.

c. *Concerns Regarding the Relationship to Clean Closure Standards.* The commenter stated that the decision to grant Boeing's petition would "effectively [circumvent] the protective standards that govern 'clean closure' while allowing Boeing to enjoy all the benefits of clean closure". The commenter expressed concern that if the petitioned soils were delisted, Boeing would not be subject to any relevant controls under current subtitle D regulations. The commenter also believed that the delisting process is inappropriate to evaluate Boeing's soils because alternate exposure pathways were not considered in the proposal; the commenter notes that a clean closure demonstration would require the evaluation of such alternate exposure pathways. Further, the commenter noted that the potential point of exposure to hazardous constituents in the delisting evaluation is at a hypothetical ground-water monitoring well located 500 feet downgradient of the disposal site; whereas, in a clean closure demonstration, the point of exposure is at the unit boundary. For these reasons, the commenter believed that the delisting evaluation was not sufficiently rigorous, but rather that clean closure is most applicable and, therefore, should be applied.

The Agency disagrees with the commenter that use of the VHS model, in this case, has underestimated, by comparison to clean closure, the potential hazard posed to human health and the environment by Boeing's petitioned soils. As stated previously, the Agency believes that a land disposal scenario is an appropriate reasonable worst-case scenario to consider in the evaluation of petitioned soils like Boeing's. While the Agency does not believe that petitioners must satisfy the criteria established for clean closure in order to obtain an exclusion, EPA notes, as documented below, that Boeing's petitioned soils appear to meet such criteria.

As noted by the commenter, on March 19, 1987, the Agency published a final rule that amended the interim status regulations for closing and providing post-closure care for hazardous waste surface impoundments (40 CFR part 265, subpart K). The preamble to this rule presented EPA's interpretation of the "remove and decontaminate" language in 40 CFR parts 264 and 265 (*i.e.*, the preamble described the amount of removal or decontamination that obviates the need for post-closure care for both interim status and permitted surface impoundment units). The preamble also described the difference between clean closure and the delisting mechanism, as also noted by the commenter. Because Boeing's petitioned soils appear to meet the general clean closure criteria (as discussed in detail below), the Agency believes that it is unnecessary to respond specifically to the commenter's claim of circumvention of clean closure. The Agency investigated whether the constituents present in the petitioned soils posed a threat to human health and the environment through a ground-water pathway, direct ingestion of the soils or soils' leachate, a surface water pathway, or an air pathway.

Exposure via Ground-water Pathway

As explained in 52 FR 8704 (March 19, 1987), clean closure demonstrations, with respect to the ground-water pathway, must show that constituent levels in ground water do not exceed the Agency's health-based levels. The Agency notes that for delisting purposes, it has evaluated ground water data for the area containing the petitioned soils. Specifically, the Agency reviewed information submitted as part of Boeing's petition, including: boring logs and well construction information for the five wells monitoring the containment area (one upgradient and four downgradient), water levels, and results of the analysis of ground-water samples. Review of this information indicated that the five monitoring wells, which are located at the perimeter of the containment area, are constructed properly and are monitoring the uppermost aquifer. This review also indicated that the constituents monitored did not exceed health-based levels. See 53 FR 48655 (December 2, 1988) for additional explanation of the Agency's evaluation of Boeing's ground-water monitoring data.

Exposure via Direct Ingestion of Soils or Soil's Leachate

As discussed in 52 FR 8704 (March 19, 1987), clean closure demonstrations also must show that the contaminant left in the subsoils will not impact any environmental media in excess of Agency-recommended clean-up levels. Typically, these Agency-recommended levels are based on maximum contaminant levels (MCLs), reference doses (RfDs), or carcinogenic slope factors (CSFs); alternatively, the Agency may rely on constituent background levels.

Based on data submitted in support of Boeing's petition, the Agency identified the maximum level of each constituent that might be present in the petitioned waste if it were ingested or if the leachate resulting from the petitioned soils were ingested. The Agency then compared these levels with clean-up levels that might be established for clean closure.

For the soil ingestion scenario, the Agency compared estimated clean-up levels to total concentrations reported for each hazardous constituent. Estimated clean-up levels for potential carcinogens and systemic toxicants, under this scenario, were calculated using CSFs and RfDs, respectively. For the scenario whereby the soils' leachate or ground-water contaminated by the leachate are directly ingested, the Agency compared estimated clean-up levels to leachable concentrations reported (or estimated in the case of the detected organics) for each hazardous constituent. MCLs were chosen as the estimated leachable clean-up levels when available; otherwise, CSFs and RfDs were used to calculate clean-up levels for carcinogens and systemic toxicants, respectively. The Agency relied on information in the Integrated Risk Information System (IRIS) to perform these calculations. (For a more detailed description of the Agency's estimation of clean-up levels and use of these estimated levels see the RCRA public docket for today notice.)

The Agency's evaluation of Boeing's petitioned soils, from a soil ingestion scenario, indicated that the total constituent levels of the EP toxic metals (except for arsenic and lead), nickel, cyanide, and the five hazardous organics detected in Boeing's petitioned soils are clearly below estimated clean-up levels for soils. The Agency believes that arsenic and lead levels in the petitioned soils are also not of concern because arsenic and lead levels are well within background levels. Specifically, the Agency reviewed the open literature

for published data on arsenic and lead levels in similar soils. Information obtained during this review indicated that arsenic levels in soils located in the Seattle, Washington area (Boeing's facility is located just south of Seattle in Auburn, Washington) range between 6.5 and 10 ppm. (See the RCRA public docket for today's notice for a summary of arsenic data for soils.) Further, two samples of imported clean fill dirt, which Boeing used to construct the road around the site during waste excavation, contained at least 3.6 ppm of arsenic. By comparison, arsenic concentrations in the petitioned soils were reported to range between 1.6 and 2.6 ppm.

Similarly, lead levels in soils collected from the Seattle area range between 20 and 300 ppm; a geometric mean concentration for the western portion of the United States was estimated to be 5.5 ppm. (See the RCRA public docket for today's notice for a summary of lead data for soils.) Lead levels in the two clean fill dirt samples were reported to be 5.5 and 8.5 ppm. By comparison, lead levels in the petitioned soils were reported to range between 1.7 and 2.5 ppm. The Agency does not therefore, believe that arsenic and lead levels in the petitioned soils are of concern. In addition, the Agency believes that this approach is consistent with the use of background levels in clean closure demonstrations. For these reasons, the Agency believes that there is no substantial present or potential hazard to human health from the direct ingestion of Boeing's petitioned soils.

The Agency's evaluation of Boeing's petitioned soils, from a leachate or ground-water ingestion scenario, indicated that the maximum levels of barium, cadmium, nickel, selenium, cyanide, acetone, dibutylphthalate, bis(2-ethylhexyl)phthalate, and dioctylphthalate are below estimated clean-up levels for soils' leachate. The Agency notes that the detection limits used for laboratory analysis of arsenic, chromium, lead, mercury, and silver were higher than the estimated clean-up levels for these constituents. However, the Agency believes that it is inappropriate (in the context of clean closure as well as delisting) to evaluate nondetectable concentrations of a constituent of concern if the nondetectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

The Agency also believes that the apparent levels of methylene chloride in the petitioned soils and soils' leachate are not of concern. Quality control data provided in Boeing's petition indicate trace levels of methylene chloride and detectable levels of acetone in field and method blanks are, respectively, used to detect sample contamination due to sampling procedures and monitor the introduction of any variable in the analytical procedures (*e.g.*, contamination of samples in the laboratory or instrumental error), the Agency believes that acetone and methylene chloride are most likely laboratory contaminants and that detected levels in Boeing's soils samples do not represent the actual presence of these constituents in the petitioned soils.

Exposure via a Surface Water Pathway

Based on its evaluation of Boeing's petitioned soils, from a soils' leachate ingestion scenario, the Agency believes there is no substantial present or potential hazard to human health or the environment from a surface water pathway. If surface water were to transport contaminants from the petitioned soils to a nearby surface water body, the Agency believes that the concentrations of any hazardous constituents in the runoff would tend to be lower than the reported EP leachate levels due to the more aggressive acidic medium of the EP toxicity test. Because, as described above, the levels of constituents in the waste leachate do not appear to represent a threat through direct ingestion, the Agency believes that potential levels in surface water would also be of no concern. In addition, any transported constituents would be further diluted in the surface water body. Finally, the Agency notes that the levels of all constituents detected in the waste leachate are also below EPA's Water Quality Criteria for human exposure through ingestion of surface water and potentially contaminated aquatic organisms. (See the RCRA public docket for today's notice for more details.)

Exposure via an Air Pathway

Finally, the Agency believes there is no substantial present or potential hazard to human health or the environment from airborne exposure to contaminants from Boeing's petitioned soils. The Agency evaluated the potential impacts of exposure to Boeing's petitioned soils via an inhalation route using reasonable worst-case or typical-case assumptions. Specifically, the Agency estimated the inhalation exposure rates for the EP toxic metals, nickel, cyanide, and the five hazardous organics detected in Boeing's petitioned soils. These inhalation exposure rates were then compared with a level of concern for each constituent. The levels of concern were calculated from available inhalation-based RSDs for arsenic, cadmium, chromium, and nickel. In the absence of an established inhalation level, an oral MCL, RfD, or RSD was used. The Agency's evaluation of Boeing's petitioned soils, from an inhalation scenario, indicated that levels of the EP toxic metals, and the hazardous organics detected in Boeing's petitioned soils are below estimated levels of concern. (See the RCRA public docket for today's notice for a description of these assumptions and calculations.) In addition, because the levels of constituents in the petitioned soils are below background or health-based levels, the Agency believes that airborne exposure to these hazardous contaminants is unlikely to present a hazard. Therefore, the Agency believes that exposure to Boeing's petitioned soils from an inhalation route does not pose a threat to human health or the environment.

d. *Concerns Regarding the Reported Detection Limits.* The second commenter was disturbed by high laboratory detection limits reported for metals in Tables 1 and 2 of the proposed rule. As examples, the commenter cited the detection limit of arsenic that was four times its delisting health-based level, and the detection limits for chromium, lead, and silver which were twice the delisting health-based levels for these constituents.

Detection limits for waste constituents vary according to the waste matrix and constituents being analyzed. EPA evaluated the analyses and accompanying Quality Control data submitted by Boeing and believes that the data are valid. While the detection limits may seem high, they are not unusual for soil leachate. As stated previously, the Agency believes that it is inappropriate to evaluate nondetectable concentrations of a constituent of concern if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method and proper quality control procedures), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment. Furthermore, the Agency believes that leachable levels of the metals from Boeing's soils are unlikely to be of concern because, as described previously, the total levels of

the metals are already below health-based levels or background.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Boeing's residually-contaminated soils should be excluded from hazardous waste control. The Agency, therefore, is granting a final, onetime exclusion to the Boeing Commercial Airplane Company, located in Auburn, Washington, for its residually-contaminated soils, described in its petition as EPA Hazardous Waste No. F006.

Although management of the soils covered by this petition is relieved from Subtitle C jurisdiction, Boeing must either (1) continue to manage the waste on site at its present location in accordance with applicable state regulations; or (2) treat, store, or dispose of the soils in another on-site unit, or ensure that the soils are delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect on Final Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since the petitioner's waste may be regulated under a dual system (*i.e.*, both Federal [RCRA] and State [non-RCRA] programs), petitioners are urged to contact their State regulatory authority to determine the current status of their waste under State law.

IV. Effective Date

This rule is effective immediately upon publication in the **Federal Register.** The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and ecomomic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as nonhazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. § 3501, *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: March 15, 1990.

Jeffery D. Denit,

Deputy Director, Office Of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§ 6905, 6912(a), 6921, and 6922).

2. In Table 1 of Appendix IX to part 261, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22.

Table 1.—Wastes Excluded from Non-Specific Sources

Facility	Address	Waste description
*	*	*
Boeing Commercial Airplane Co.	Auburn, Washington.	Residually contaminated soils in an inactive sludge pile containment area on March 27, 1990, previously used to store wastewater treatment sludges generated from electroplating operations (EPA Hazardous Waste No. F006).
*	*	*

[FR Doc. 90–6918 Filed 3–26–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL–3749–2]

Arkansas: Final Authorization of Revisions to the State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Arkansas has applied for final authorization of revisions to its hazardous waste

program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Arkansas application and has made a decision, subject to public review and comment, that the Arkansas hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving the Arkansas hazardous waste program revision application, unless adverse public comment shows the need for further review. The Arkansas application is available for public review and comment.

DATES: Final authorization for the Arkansas revision shall be effective May 29, 1990, unless EPA publishes a prior **Federal Register** notice withdrawing this immediate final rule. All comments on the Arkansas program revision application must be received by the close of business April 26, 1990.

ADDRESSES: Copies of the Arkansas program revision application, which includes materials which EPA used in evaluating the revision, are available from 8:30 a.m. to 4 p.m., Monday through Friday, at the following addresses for inspection and copying: Arkansas State Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209, phone (501) 562–7444; U.S. EPA Region 6, Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–6444; and U.S. EPA Headquarters, Library, PM 211A, 401 M Street SW., Washington, DC 20460, phone (202) 382–5926. Written comments, referring to document AR–89–1, should be sent to Ms. Lynn Prince, Grants and Authorization section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–6760.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Prince, Grants and Authorization section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–6760.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to the Federal program, that is consistent with the Federal or State programs applicable in other states, and that provides adequate enforcement of compliance with the requirements of RCRA. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. These State program revisions are necessitated by changes to EPA's regulations.

B. Arkansas

The State of Arkansas received final authorization on January 25, 1985, (50 FR 1513, published on January 11, 1985) to implement its base hazardous waste management program. In a letter dated October 15, 1987, Arkansas submitted a program revision application for additional program approvals. That application was amended by Arkansas to incude additional State program revisions in a letter dated July 11, 1988. Arkansas is seeking approval of all of these program revisions in accordance with 40 CFR 271.21(b), except that approval was not requested for revisions which are required as a result of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98–616, November 8, 1984, hereinafter "HSWA").

EPA has reviewed the Arkansas application, and has made a decision that the Arkansas non-HSWA hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization for these non-HSWA modifications to the Arkansas program subject to further review based on adverse public comment.

The public may submit written comments on EPA's decision to authorize the revisions in an immediate final rule until April 26, 1990. Copies of the Arkansas application for program revision, which includes the materials which EPA used in evaluating the revision, are available for inspection and copying at the locations indicated in the "Addressess" section of this notice.

Approval of the Arkansas program revision application will become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the 30-day comment period. If an adverse comment is received, EPA will publish either (1) A withdrawal of the immediate final rule or (2) a notice containing a response to comments which either affirms that the immediate final rule takes effect or reverses the decision.

The Arkansas program revision application is based on changes to State regulations which were intended to make them equivalent to the analogous Federal regulations which had been promulgated through June 30, 1987, in 40 CFR parts 260–266, 124, and 270. Although these changes included the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA), the State is not seeking HSWA authorization at this time. EPA does not propose authorization of HSWA provisions, including the availability of information provisions, with this notice. This proposed approval is, therefore, limited to the non-HSWA provisions that were promulgated through June 30, 1987.

State rules listed in the following chart adopt by reference the corresponding Federal regulations as they have been changed up through June 30, 1987. Some of the State rules adopt more than one regulation; consequently, these State rules appear on the chart more than once. As explained elsewhere in this notice, Arkansas will not be authorized for certain Federal regulations at this time. Some of the State rules listed adopt Federal regulations for which the State will not be authorized at this time; however, the listing of these State rules is only for ease of reference, and it does not mean that the entire State rule is authorized.

Federal Citation	State Analog
1. Interim status standards for landfills—changes in 40 CFR Part 265, Subparts K, M, and N—as published in the FEDERAL REGISTER on April 23, 1985.	Section 3(a)(6) of the Arkansas Hazardous Waste Management Code (AHWMC).
2. Financial responsibility: Settlement Agreement—changes in 40 CFR Parts 260, Subpart B; 264, Subparts G and H; 265, Subparts G and H; and 270, Subparts B, D, and G—as published in the FEDERAL REGISTER on May 2, 1986.	Section 3(a) (1), (5), (6), and (9) of AHWMC.
3. Listing of spent pickle liquor from steel finishing operations—changes in 40 CFR Part 261, Subpart D—as published in the FEDERAL REGISTER on May 28, 1986, and September 22, 1986.	Section 3(a)(2) of AHWMC.
4. Liability coverage—corporate guarantee changes in 40 CFR Parts 264, Subpart H and 265, Subpart H—as published in the FEDERAL REGISTER on July 11, 1986.	Sections 3(a) (5), and (6) of AHWMC.

Federal Citation	State Analog
5. Correction to the tank standards—changes to 40 CFR Parts 260, 261, 262, 264, 265, and 270—published in the FEDERAL REGISTER on July 14, 1986.	Sections 3(a) (1), (2), (3), (5), (6), and (9) of AHWMC.
6. Corrections to the listing of commercial chemical products and Appendix VIII constituents—changes to 40 CFR Part 261, Subpart D—as published in the FEDERAL REGISTER on August 6, 1986.	Section 3(a)(2) of AHWMC.
7. Add the hazardous components of radioactive mixed wastes to the definition of solid waste—changes to 40 CFR Parts 261 and 271—as published in the FEDERAL REGISTER on July 3, 1986.	Section 3(a) of AHWMC.
8. Revisions to Manual SW-846; amended incorporation by reference—changes to 40 CFR Parts 260 and 270—as published in the FEDERAL REGISTER on March 16, 1987.	Section 3(a) (1) and (9) of AHWMC.
9. Closure, post-closure care for interim status surface impoundments—changes to 40 CFR Part 265, Subpart K—as published in the FEDERAL REGISTER on March 19, 1987.	Section 3(a)(6) of AHWMC.
10. Definition of solid waste technical correction—changes to 40 CFR Parts 261, Subpart D and 266, Subpart C—as published in the FEDERAL REGISTER on June 5, 1987.	Section 3(a) (2) and (7) of AHWMC.
11. Amendments to Part B information requirements for disposal facilities—changes to 40 CFR Part 270, Subpart B—as published in the FEDERAL REGISTER on June 22, 1987.	Section 3(a)(9) of AHWMC.

EPA can authorize State rules which are more stringent than the Federal program (RCRA section 3010, 42 U.S.C. 6929). Since Arkansas regulations include many more stringent "HSWA-type" requirements, EPA plans to authorize these regulations as more stringent provisions of the Arkansas authorized RCRA program. The "HSWA-type" requirements are not being authorized for HSWA purposes at this time. The reason the HSWA program is not being authorized at this time is that the State requested that they not be authorized at this time. EPA, therefore, will retain its responsibilities to carry out the HSWA provisions in Arkansas.

The Arkansas provisions incorporating the Federal HSWA provisions concerning research, development, and demonstration permits have not been evaluated and are not a part of the authorized revisions, since Arkansas has not applied, nor is it required at this time to apply for authorization of these Federal HSWA requirements. Furthermore, this particular HSWA rule is less stringent than the base RCRA permitting requirements. Therefore, the following rule is not being authorized at this time:

Research, Development, and Demonstration Permits

Arkansas Hazardous Waste Management Code, chapter 2, section 3(a)(9) (portion) September 25, 1987: R, D, and D permits (*See* 40 CFR § 270.10(a) and § 270.65). That portion of section 3(a)(9) which includes provisions for R, D, and D permits is not being authorized at this time.

The following State rules were determined to be broader in scope than the Federal requirements, and, therefore, are not part of the authorized Arkansas program:

Fees

(1) AHWMC chapter 2, section 11: Fees and costs. Entire section is broader in scope.

(2) AHWMC chapter 4, section 23: Fees on the generation of hazardous wastes. Entire section is broader in scope.

PCB's

(1) AHWMC chapter 2, section 2(a)(5) (portion): The definition of hazardous waste contained in section 2(a)(5) contains a portion which includes PCBs as a hazardous waste. The portion of this definition which includes PCB's as a hazardous waste is broader in scope.

(2) AHWMC chapter 2, sections 2(b)(11) and 16(c)(10) (portion): PCB Identification numbers. All of section 2(b)(11), and that portion of section 16(c)(10) which refers to PCB identification numbers are broader in scope.

(3) AHWMC chapter 2, section 16(a): Requirements for the transportation of PCBs. The entire subsection is broader in scope.

The following State rules were added by adoption of the HSWA provisions. Because the State has not applied for these HSWA authorities, these Federal requirements will not become part of the Arkansas authorized program until the State applies for and receives authorization for them. References to the Arkansas AHWMC are to the regulations as promulgated on June 30, 1987.

Additional Wastes

(1) AHWMC chapter 2, section 3(a)(2) (portion): Dioxin wastes (See 50 FR 1978, January 14, 1985); TDI, DNT, and TDA wastes (See 50 FR 42936, October 23, 1985); Spent solvents (See 50 FR 53315, December 31, 1985); EDB wastes (See 51 FR 5330, February 13, 1986); Additional spent solvents (See 51 FR 6541, February 25, 1986); and EBDC (See 51 FR 37725, October 24, 1986). Those portions of section 3(a)(2) which include the regulation of the above listed wastes are broader in scope.

The State of Arkansas is not authorized to operate on Indian lands.

C. Decision

In conclude that the Arkansas program revision application meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arkansas is granted final authorization to operate its hazardous waste program as revised. Arkansas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its revised program application and previously approved authorities. Arkansas also has primary enforcement responsibilities, and EPA will exercise its enforcement responsibilities in accordance with the Memorandum of Agreement between EPA and Arkansas.

D. Codification Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize the Arkansas program and for incorporation by reference of those provisions of the Arkansas statutes and regulations that EPA will enforce under subtitle C of RCRA. Therefore, EPA will amend part 272, subpart E, under a separate notice.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Compliance under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial

number of small entities. This authorization does not create any new requirements, but simply approves requirements that are already State law. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended in 42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: August 31, 1989.

Robert E. Layton, Jr.,

Regional Administrator.

[FR Doc. 90–6919 Filed 3–26–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GEN Docket 88–550; DA 90–442]

Accommodation of the Government Next Generation Weather Radars in the 2900–3100 MHz band; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning accommodation of the Government next generation weather radars in the 2900–3100 MHz band (55 FR 6392, February 23, 1990) which contained errors in the Table of Frequency Allocations, part 2, § 2.106 and the list of footnotes at the end of the Table.

EFFECTIVE DATE: March 30, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Office of Engineering and Technology, (202) 653–8106.

SUPPLEMENTARY INFORMATION: In FR Doc 90–4083, published in the February 23, 1990, **Federal Register** on page 6392, amendatory item number 2 is corrected to read as follows:

"2. In § 2. 106, the Table of Frequency Allocations, under columns 4 and 5, revise 2900–3100 MHz band to read as follows:

§ 2.106 Table of Frequency Allocations

* * * * *

United States table

Government allocation (MHz) (4)	Non-Government allocation (MHz) (5)
* * *	* * *
2900–3100	2900–3100.
Maritime Radionavigation	Maritime Radionavigation.
775A	775A.
Radiolocation	Radiolocation
US44 US316 G56	US44 US316
* * *	* * *

* * * * *

United States (US) Footnotes

US316 The band 2900–3100 MHz is also allocated on a primary basis to the Meteorological Aids Service. Operations in this service are limited to Government Next Generation Weather Radar (NEXRAD) systems where accommodation in the 2700–2900 MHz band is not technically practical and are subject to coordination with existing authorized stations."

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–6608 Filed 3–26–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR PART 73

[MM Docket No. 89–494, DA 90–24]

Broadcast Services; Prohibitions Against Broadcast Indecency

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry; extension of comment period.

SUMMARY: The Commission extends the time for filing reply comments in its proceeding regarding a 24-hour ban on broadcast indecency from March 20, 1990, to April 19, 1990. This action is taken to further the Commission's goal of developing a complete and reliable evidentiary record in this proceeding.

DATES: Reply comments are due April 19, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Order Extending Time to File Reply Comments

Adopted: March 19, 1990.

Released: March 19, 1990.

By the Chief, Mass Media Bureau.

In the matter of enforcement of prohibitions against broadcast indecency in 18 U.S.C. 1464.

1. On October 26, 1989, the Commission adopted a *Notice of Inquiry*, 4 FCC Rcd 8358 (1989), in response to a remand of their record in *Action for Children's Television* v. *FCC*, No. 88–1916 (DC Cir. Sept. 13, 1989) (*ACT II*) to solicit public comment regarding the validity of a total ban on the broadcast of indecent material. The Commission established a deadline of January 19, 1990 for filing comments, and a deadline of February 16, 1990 for filing reply comments. These deadlines were extended to February 20, 1990 for comments and March 20, 1990 for reply comments pursuant to a request filed jointly by Capital Cities/ABC and other parties.[1]

2. Before the Commission are two motions for extension of time to file reply comments, one filed by the American Family Association, Inc. (AFA) and others [2] seeking a 20-day extension, and one filed by Salem Communications Corp. (Salem), supported by Focus on the Family and Family Research Council, seeking a 30-day extension. Both parties state that they require additional time to fully review and respond to the comments filed. AFA notes that they participated in another rulemaking procedure before the Commission related to telephone indecency for which they were required to file comments and reply comments within the 30 day reply comment period for this proceeding. Both parties assert that the extension will permit them to submit more meaningful replies that will assist the Commission, and the ACT II Court, in compiling a complete record in this proceeding.

3. An opposition to the requests for extension of time was filed jointly by

[1] *See Order Extending Time To File Comments* in MM Docket No. 89–494, 55 FR 2236 (Jan. 23, 1990).

[2] The motion was filed jointly by American Family Association, Inc., Children's Legal Foundation, Inc., Advent Christian General Conference, Assembly of God, Baptist General Conference, Associate Reformed Presbyterian, Catholic Center, Central Presbyterian Church, Christian Standard, Conservative Baptist Association, Conservative Congregational Christian Conference, Diocese of Eau Claire, Evangelical Free Church of America, General Association of General Baptists, General Conference of Mennonite Church, International Pentecostal Church of Christ, Missionary Church, North American Christian Convention, Open Bible Standard Churches and Wesleyan Church.

Capital Cities/ABC and others [3]—the same parties who were granted the initial extension of time in this proceeding. Capital Cities, *et al.*, argue that there is an urgent need to resolve this proceeding because they contend that the Commission's current daytime enforcement of broadcast indecency unconstitutionally chills protected speech. They argue further that neither AFA nor Salem have provided "compelling justification" for a further extension of time as required by the first extension of time Order.

4. Contrary to the Capital Cities' assertion, we believe there is compelling justification for the grant of additional time. Salem requests the extension to "analyze and critique positions and factual assertions set forth in the initial comments." [4] Among these factual assertions, are a study on parental supervision and research on harm to children from indecent broadcasts submitted by Capital Cities, *et al.* As we stated in our Notice, we are particularly interested in factual studies, data and research regarding the validity of a 24-hour ban. We are equally interested in whether the data and research submitted in the initial comments are valid. Thus, we believe that providing parties with additional time to permit them to critically review and react to such studies and research will further the Commission's goal of developing a complete and reliable evidentiary record in this proceeding.

5. We also reject Capital Cities' argument that urgent resolution is required because the Commission's daytime enforcement standard unconstitutionally chills protected speech. We agree that this proceeding should be resolved promptly, but not at the risk of compromising the integrity of the record upon which the Commission and the Court must rely in deciding this critical issue. Moreover, pending Commission action and judicial review, broadcasters are operating under essentially the same enforcement standard that was judicially affirmed and was in effect prior to Congress' adoption of the 24-hour ban. *See FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978) and *Action for Children's Television* v. *FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

6. Accordingly, *It Is Ordered* That the Motions for Extension of Time are granted.

7. *It Is Further Ordered* That the time for filing reply comments in this proceeding is extended by 30 days to April 19, 1990.

8. This action is taken pursuant to authority found in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, and 1.46 of the Commission's Rules.

9. For further information concerning this proceeding, contact Marilyn Mohrman-Gillis, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 90-6644 Filed 3-26-90; 8:45 am]

BILLING CODE 6712-01-M

[3] The motion was filed by Capital Cities/ABC, Inc., CBS Inc., Action for Children's Television, American Civil Liberties Union, Association of Independent Television Stations, Inc., Radio-Television News Directors Association, Infinity Broadcasting Corp., Motion Picture Association of America, Inc., National Association of Broadcasters, National Broadcasting Company, Inc., National Public Radio, People for the American Way, Post-Newsweek Stations, Inc., Public Broadcasting Service, The Reporters Committee for Freedom of the Press, Recording Industry Association of America, and Society of Professional Journalists.

[4] *See Salem Motion for Extension of Time* at 3.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1022, 1043, 1044, 1047, 1051, 1058, 1061, 1063, 1067, 1070, 1080, 1081, 1083, 1084, 1085, 1091, 1104, 1136, 1143, 1161, 1167, 1169, 1170, and 1331

[Ex Parte No. 55 (Sub-No. 73)]

Practice and Procedure; Miscellaneous Amendments; Revisions [1]

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting final rules, as set forth below, revising the above-numbered Parts of title 49, Code of Federal Regulations, as part of an effort to streamline and update its regulations. Our intention is to make our rules more understandable and easier to use. A notice of proposed rulemaking was published in the **Federal Register** on October 11, 1989, at 54 FR 41643.

EFFECTIVE DATE: April 26, 1990.

FOR FURTHER INFORMATION CONTACT: James L. Brown (202) 275-7898 or Richard B. Felder (202) 275-7691. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: The vast majority of these revisions involve editing to remove obsolete, unnecessary, or redundant material from Parts that are being retained. Minor modifications to the proposed rules specifically in § § 1143.3(b), 1169.1, 1169.2(b)(3), and 1331.5, have been made in response to public comments. These modifications, generally, restore material proposed to be deleted.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services at (202) 275-1721.)

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We affirm our prior certification. These rules will not have a significant effect on a substantial number of small entities. Either they contain no substantive change from the existing regulations or they delete and remove obsolete or unnecessary material, and thus reduce the regulatory burden. The revised Parts should provide information that is both more accessible and more understandable, and to that extent our action should benefit small entities.

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List of Subjects

49 CFR Part 1022

Intergovernmental relations.

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49 CFR Part 1051

Freight forwarders, Motor carriers, and Reporting and recordkeeping requirements.

49 CFR Part 1058 and 1167

Motor carriers.

49 CFR Part 1061

Motor Carriers and Smoking.

[1] In the prior *ICC Register* publication of proposed rules, this proceeding was titled "Revisions to title 49 of Code of Federal Regulations."

49 CFR Part 1061

Motor carriers and smoking.

49 CFR Part 1063

Aged, Blind, Handicapped, and Motor carriers.

49 CFR Part 1067 and 1161

Administrative practice and procedure and Motor carriers.

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49 CFR Part 1091

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49 CFR Part 1170

Administrative practice and procedure, Buses, and Employment.

49 CFR Part 1331

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, and Railroads.

Decided: March 20, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

For reasons stated in the preamble, title 49, chapter X, parts 1022, 1043, 1044, 1047, 1051, 1058, 1061, 1063, 1067, 1070, 1080, 1081, 1083, 1084, 1085, 1091, 1104, 1136, 1143, 1161, 1167, 1169, 1170, and 1331 of the Code of Federal Regulations are amended as follows:

1. Part 1022 is revised to read as follows:

PART 1022—COOPERATIVE AGREEMENTS WITH STATES

Sec.

1022.1 Eligibility.
1022.2 Extent of agreement.
1022.3 Cancellation.
1022.4 Exchange of information.
1022.5 Requests for assistance.
1022.6 Joint investigation or inspection
1022.7 Joint administrative activities.
1022.8 Supplemental agreements.

Authority: 49 U.S.C. 10101, 10321, and 11502.

§ 1022.1 Eligibility.

Any State may agree with the Interstate Commerce Commission to enforce the economic laws and regulations of that State and the United States concerning highway transportation.

§ 1022.2 Extent of agreement.

The written agreement, signed by a competent State authority and filed with the Commission's Office of the Secretary, shall specify the extent of the State's participation, as described below. The Commission will reciprocate to that extent.

§ 1022.3 Cancellation.

Either party may cancel or withdraw from all or part of a cooperative agreement by written notice indicating the effective date of such action.

§ 1022.4 Exchange of information.

Information acquired by a State agent, in his official duties, regarding violation of the economic laws of the United States concerning highway transportation or of the Commission's regulations, shall be communicated to the Regional Director of the Commission's Office of Compliance and Consumer Assistance.

§ 1022.5 Requests for assistance.

Either party to a cooperative agreement may request, in writing, the other's assistance in obtaining evidence to enforce the economic laws and regulations governing highway transportation. Such evidence, obtained as time, personnel, and funds permit, shall be transmitted to the State authority or Regional Director, as the case may be, together with the name and address of any agent or personnel available to testify in an enforcement action.

§ 1022.6 Joint investigation or inspection.

The Regional Director and appropriate State authority may agree to conduct a joint inspection or investigation of the property, equipment, or records of motor carriers or others, to enforce the pertinent economic laws and regulations. They shall decide the location, time, and objectives of the joint effort, and shall select the persons who will supervise it and make the necessary decisions. Any agent or personnel of either agency having knowledge of the facts shall be made available to testify in an enforcement action.

§ 1022.7 Joint administrative activities.

To facilitate the interchange of information and evidence, and the conduct of the joint effort and any ensuing administrative action, the Regional Director and appropriate State authority shall, when warranted, schedule joint conferences. They shall inform each other of their enforcement capabilities and of any changes in their regulations.

§ 1022.8 Supplemental agreements.

The Commission and State may agree to supplement their agreement to further implement 49 U.S.C. 11502.

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

2. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, and 10927; 5 U.S.C. 553.

3. Paragraph (a) of § 1043.10 is revised to read as follows:

§ 1043.10 Fiduciaries.

(a) *Definitions.* The terms "insured" and "principal" as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a motor carrier, include the motor carrier and its fiduciary as of the moment of succession. The term "fiduciary" means any person authorized by law to collect and preserve property of incapacitated, financially disabled, bankrupt, or deceased holders of operating rights, and assignees of such holders.

* * * * *

4. Part 1044 is revised to read as follows:

PART 1044—DESIGNATION OF PROCESS AGENT

Sec.

1044.1 Applicability.
1044.2 Form of designation.
1044.3 Eligible persons.
1044.4 Required States.
1044.5 Blanket designations.
1044.6 Cancellation or change.

Authority: 49 U.S.C. 10329, 10330, and 11705.

§ 1044.1 Applicability.

These rules, relating to the filing of designations of persons upon whom court process may be served, govern motor carriers and brokers and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 1043.10(a)).

§ 1044.2 Form of designation.

Designations shall be made on Form BOC–3, *Designation of Agent for Service of Process.* Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker at its principal place of business.

§ 1044.3 Eligible persons.

All persons (as defined at 49 U.S.C. 10102(18)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his willingness to accept service of process must be furnished.

§ 1044.4 Required States.

(a) *Motor carriers.* Every motor carrier (or property or passengers) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) *Brokers.* Every broker shall make a designation for each State in which its offices are located or in which contracts will be written.

§ 1044.5 Blanket designations.

Where an association or corporation has filed with the Commission a list of process agents for each State, motor carriers may make the required designations by using the following statement:

Those persons named in the list of process agents on file with the Interstate Commerce Commission by_____

(Name of association or corporation) and any subsequently filed revisions thereof, for the States in which this carrier is or may be authorized to operate, including States traversed during such operations, except those States for which individual designations are named.

§ 1044.6 Cancellation or change.

A designation may be canceled or changed only by a new designation except that, where a carrier or broker ceases to be subject to § 1044.4 in whole or in part for 1 year, designation is no longer required and may be canceled without making another designation.

PART 1047—EXEMPTIONS

5. The authority citation for part 1047 continues to read as follows:

Authority: 49 U.S.C. 10525, 10526, and 10931.

6. The title of the last undesignated center heading of part 1047, where it appears both in the table of contents and immediately before § 1047.45, is revised to read as follows:

Partial Exemption for Motor Transportation of Passengers Incidental to Transportation by Aircraft

7. Part 1051 is revised to read as follows:

PART 1051—RECEIPTS AND BILLS

Sec.
1051.1 Bills of lading.
1051.2 Expense bills.
1051.3 Low value packages.

Authority: 49 U.S.C. 10321 and 11144; 5 U.S.C. 553.

§ 1051.1 Bills of lading.

Every motor common carrier shall issue a receipt or bill of lading for property tendered for transportation in interstate or foreign commerce containing the following information:

(a) Names of consignor and consignee.

(b) Origin and destination points.

(c) Number of packages.

(d) Description of freight.

(e) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

The carrier shall keep a copy of the receipt or bill of lading as prescribed in 49 CFR part 1220.

§ 1051.2 Expense bills.

(a) *Property.* Every motor common carrier shall issue a freight or expense bill for each shipment transported containing the following information:

(1) Names of consignor and consignee (except on a reconsigned shipment, not the name of the original consignor).

(2) Date of shipment.

(3) Origin and destination points (except on a reconsigned shipment, not the original shipping point unless the final consignee pays the charges from that point).

(4) Number of packages.

(5) Description of freight.

(6) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

(7) Exact rate(s) assessed.

(8) Total charges due, including the nature and amount of any charges for special service and the points at which such service was rendered.

(9) Route of movement and name of each carrier participating in the transportation.

(10) Transfer point(s) through which shipment moved.

(11) Address where remittance must be made or address of bill issuer's principal place of business.

The shipper or receiver owing the charges shall be given the original freight or expense bill and the carrier shall keep a copy as prescribed at 49 CFR part 1220. If the bill is electronically transmitted (when agreed to by the carrier and payor), a receipted copy shall be given to the payor upon payment.

(b) *Charter service.* Every motor passenger common carrier providing charter service shall issue an expense bill containing the following information:

(1) Serial number, consisting of one of a series of consecutive numbers assigned in advance and imprinted on the bill.

(2) Name of carrier.

(3) Names of payor and organization, if any, for which transportation is performed.

(4) Date(s) transportation was performed.

(5) Origin, destination, and general routing of trip.

(6) Identification and seating capacity of each vehicle used.

(7) Number of persons transported.

(8) Mileage upon which charges are based, including any deadhead mileage, separately noted.

(9) Applicable rates per mile, hour, day, or other unit.

(10) Itemized charges for transportation, including special services and fees.

(11) Total charges assessed and collected.

The carrier shall keep a copy of all expense bills issued for the period prescribed at 49 CFR part 1220. If any expense bill is spoiled, voided, or unused for any reason, a copy or written record of its disposition shall be retained for a like period.

§ 1051.3 Low value packages.

The carrier and shipper may elect to waive the above provisions and use a more streamlined recordkeeping or documentation system for distribution of "low value" packages. This includes the option of shipping such packages under the released rates provisions at 49 U.S.C. 10730. The shipper is responsible ultimately for determining which packages should be designated as low value. A useful guideline for this determination is an invoice value less

than or equal to the costs of preparing a loss or damage claim.

8. Part 1058 is revised to read as follows:

PART 1058—IDENTIFICATION OF VEHICLES

Sec.
1058.1 Applicability.
1058.2 Method of identification.
1058.3 Size, shape, and color.
1058.4 Driveaway service.

Authority: 49 U.S.C. 10922, 10530, and 11106; 5 U.S.C. 553.

§ 1058.1 Applicability.

These rules govern all for-hire motor carriers except those providing:

(a) Joint, through, regular-route passenger service under continuing lease or interchange arrangements, if the vehicle owner's name and "MC" number are displayed as prescribed at § 1058.2, and if the carriers have filed with the Commission's appropriate Regional Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and

(b) Nonscheduled, charter, luxury-type passenger service using limousine-type vehicles with a capacity of six or fewer passengers.

§ 1058.2 Method of identification.

Each vehicle operated under its own power shall display on both sides the name (or trade name) and "MC" number(s) of the carrier under whose authority the vehicle is being operated. The "MC" number(s) shall be in the following form: "I.C.C. MC-_____" but shall not include any sub numbers. The name of any other person operating the vehicle shall appear on the vehicle following the words "operated by" in addition to the other information required by this section. Additional identification may be displayed if consistent with these rules.

§ 1058.3 Size, shape, and color.

The name(s) and number(s) prescribed above shall be displayed, by removable device if desired, in letters and figures in sharp color contrast to their background, and they shall be of a size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is stationary.

§ 1058.4 Driveaway service.

In driveaway service, a removable device may be affixed on both sides or at the rear of the single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit.

9. Part 1061 is revised to read as follows:

PART 1061—LIMITATION OF SMOKING ON INTERSTATE BUSES

Authority: 49 U.S.C. 10521, 11101, and 11701.

§ 1061.1 Separate seating for smokers and nonsmokers.

(a) If otherwise permitted by law, motor common carriers of passengers may permit smoking of cigars, cigarettes, or pipes only in a smoking section, consisting of seats in the rear of the vehicle up to 30 percent of its capacity. This section does not apply to passenger carriers conducting charter operations.

(b) In unusual circumstances, the driver of the vehicle (or other carrier personnel) may make reasonable, minor modifications to assure passengers' comfort and safe, adequate, and expeditious transportation service.

10. Part 1063 is revised to read as follows:

PART 1063—ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

Sec.
1063.1 Applicability.
1063.2 Definitions.
1063.3 Ticketing and information.
1063.4 Baggage service.
1063.5 Terminal facilities.
1063.6 Service responsibility.
1063.7 Equipment.
1063.8 Accommodations for handicapped, disabled, blind, and elderly.
1063.9 Identification—bus and driver.
1063.10 Relief from provisions.

Authority: 49 U.S.C. 10102, 10321, 10701, 10702–10705, 10708, 10721, 10722, 10724, 10730, 10741, 10761, 10762, 10764, 10922, 11101, 11141–11145, 11701, 11702, 11707, 11708, 11901, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C. 553 and 559.

§ 1063.1 Applicability.

These rules govern only motor passenger common carriers conducting regular-route operations.

§ 1063.2 Definitions.

(a) *Carrier* means a motor passenger common carriers.

(b) *Bus* means a passenger-carrying vehicle, regardless of design or seating capacity, used in a carrier's authorized operations.

(c) *Facility* means any structure provided by or for a carrier at or near which buses pick up or discharge passengers.

(d) *Terminal* means a facility operated or used by a carrier chiefly to furnish passengers transportation services and accommodations.

(e) *Station* means a facility, other than a terminal, operated by or for a carrier to accommodate passengers.

(f) *Service* means passenger transportation by bus between authorized points or over authorized routes.

(g) *Commuter service,* notwithstanding 49 CFR 1312.1(b)(33), means passenger transportation wholly between points not more than 100 airline miles apart and not involving through-bus, connecting, or interline services to or from points beyond 100 airline miles. The usual characteristics of commuter service include reduced fare, multiple-ride, and commutation tickets, and peak morning and evening operations.

(h) *Baggage* means property a passenger takes with him for his personal use or convenience.

(i) *Restroom* means a room in a bus or terminal equipped with a toilet, washbowl, soap or a reasonable alternative, mirror, wastebasket, and toilet paper.

§ 1063.3 Ticketing and information.

(a) *Information service.* (1) During business hours at each terminal or station, information shall be provided as to schedules, tickets, fares, baggage, and other carrier services.

(2) Carrier agents and personnel who sell or offer to sell tickets, or who provide information concerning tickets and carrier services, shall be competent and adequately informed.

(b) *Telephone information service.* Every facility where tickets are sold shall provide telephonic information to the traveling public, including current bus schedules and fare information, when open for ticket sales.

(c) *Schedules.* Printed, regular-route schedules shall be provided to the traveling public at all facilities where tickets for such services are sold. Each schedule shall show the points along the carrier's route(s) where facilities are located or where the bus trips originate or terminate, and each schedule shall indicate the arrival or departure time for each such point.

(d) *Ticket refunds.* Each carrier shall refund unused tickets upon request, consistent with its governing tariff, at each place where tickets are sold, within 30 days after the request.

(e) *Announcements.* No scheduled bus (except in commuter service) shall depart from a terminal or station until a public announcement of the departure and boarding point has been given. The announcement shall be given at least 5 minutes before the initial departure and

before departures from points where the bus is scheduled to stop for more than 5 minutes.

§ 1063.4 Baggage service.

(a) *Checking procedures.* (1) Carriers shall issue receipts, which may be in the form of preprinted tickets, for all checked services baggage.

(2)(i) If baggage checking service is not provided at the side of the bus, all baggage checked at a baggage checking counter at least 30 minutes but not more than 1 hour before departure shall be transported on the same schedule as the ticketed passenger.

(ii) If baggage checking service is provided at the side of the bus, passengers checking baggage at the baggage checking counter less than 30 minutes before the scheduled departure shall be notified that their baggage may not travel on the same schedule. Such baggage must then be placed on the next available bus to its destination. All baggage checked at the side of the bus during boarding, or at alternative locations provided for such purpose, shall be transported on the same schedule as the ticketed passenger.

(b) *Baggage security.* All checked baggage shall be placed in a secure or attended area prohibited to the public. Baggage being readied for loading shall not be left unattended.

(c) *Baggage liability.* (1) No carrier may totally exempt its liability for articles offered as checked baggage, unless those articles have been exempted by the Commission. (Other liability is subject to 49 CFR part 1064). A notice listing exempted articles shall be prominently posted at every location where baggage is accepted for checking.

(2) Carriers may refuse to accept as checked baggage and, if unknowingly accepted, may disclaim liability for loss or damage to the following articles:

(i) Articles whose transportation as checked baggage is prohibited by law or regulation;

(ii) Fragile or perishable articles, articles whose dimensions exceed the size limitations in the carrier's tariff, receptacles with articles attached or protruding, guns, and materials that have a disagreeable odor;

(iii) Money; and

(iv) Those other articles that the Commission exempts upon petition by the carrier.

(3) Carriers need not offer excess value coverage on articles of extraordinary value (including, but not limited to, negotiable instruments, papers, manuscripts, irreplaceable publications, documents, jewelry, and watches).

(d) *Express shipments.* Passengers and their baggage always take precedence over express shipments.

(e) *Baggage at destination.* All checked baggage shall be made available to the passenger within a reasonable time, not to exceed 30 minutes, after arrival at the passenger's destination. If not, the carrier shall deliver the baggage to the passenger's local address at the carrier's expense.

(f) *Lost or delayed baggage.* (1) Checked baggage that cannot be located within 1 hour after the arrival of the bus upon which it was supposed to be transported shall be designated as lost. The carrier shall notify the passenger at that time and furnish him with an appropriate tracing form.

(2) Every carrier shall make available at each ticket window and baggage counter a single form suitable both for tracing and for filing claims for lost or misplaced baggage. The form shall be prepared in duplicate and signed by the passenger and carrier representative. The carrier or its agent shall receive the signed original, with any necessary documentation and additional information, and the claim check, for which a receipt shall be given. The passenger shall retain the duplicate copy.

(3) The carrier shall make immediate and diligent efforts to recover lost baggage.

(4) A passenger may fill out a tracing form for lost unchecked baggage. The carrier shall forward recovered unchecked baggage to the terminal or station nearest the address shown on the tracing form and shall notify the passenger that the baggage will be held on a will-call basis.

(g) *Settlement of claims.* Notwithstanding 49 CFR 1005.5, if lost checked baggage cannot be located within 15 days, the carrier shall immediately process the matter as a claim. The date on which the carrier or its agent received the tracing form shall be considered the first day of a 60-day period in which a claim must be resolved by a firm offer of settlement or by a written explanation of denial of the claim.

§ 1063.5 Terminal facilities.

(a) *Passenger security.* All terminals and stations must provide adequate security for passengers and their attendants and be regularly patrolled.

(b) *Outside facilities.* At terminals and stations that are closed when buses are scheduled to arrive or depart, there shall be available, to the extent possible, a public telephone, outside lighting, posted schedule information, overhead shelter, information on local accommodations, and telephone numbers for local taxi service and police.

(c) *Maintenance.* Terminals shall be clean.

§ 1063.6 Service responsibility.

(a) *Schedules.* Carriers shall establish schedules that can be reasonably met, including connections at junction points, to serve adequately all authorized points.

(b) *Continuity of service.* No carrier shall change an existing regular-route schedule without first filing a written notice with the Commission's appropriate Regional Office(s). The carrier shall display conspicuously a copy of such notice in each facility and on each bus affected. Such notice shall be displayed for a reasonable time before it becomes effective and shall contain the carrier's name, a description of the proposed schedule change, the effective date thereof, the reasons for the change, the availability of alternate service, and the name and address of the carrier representative passengers may contact.

(c) *Trip interruptions.* A carrier shall mitigate, to the extent possible, any passenger inconvenience it causes by disrupting travel plans.

(d) *Seating and reservations.* A carrier shall provide sufficient buses to meet passengers' normal travel demands, including ordinary weekend and usual seasonal or holiday demand. Passengers (except commuters) shall be guaranteed, to the extent possible, passage and seating.

(e) *Inspection of rest stops.* Each carrier shall inspect periodically all rest stops it uses to ensure that they are clean.

§ 1063.7 Equipment.

(a) *Temperature control.* A carrier shall maintain a reasonable temperature on each bus (except in commuter service).

(b) *Restrooms.* Each bus (except in commuter service) seating more than 14 passengers (not including the driver) shall have a clean, regularly maintained restroom, free of offensive odor. A bus may be operated without a restroom if it makes reasonable rest stops.

(c) *Bus servicing.* Each bus shall be kept clean, with all required items in good working order.

§ 1063.8 Accommodations for handicapped, disabled, blind, and elderly.

(a) *Transportation.* No carrier shall deny transportation to any person on the basis of a handicap, physical disability, or blindness, or because that

person cannot board a bus without assistance. A guide dog shall be provided free passage when accompanied by a blind person.

(b) *Assistance.* All carriers, whenever possible and on request, shall assist handicapped, disabled, blind, and elderly passengers in boarding buses (including advance boarding and seating) and using terminal accommodations and baggage service. A notice indicating where and from whom such assistance may be obtained shall be displayed prominently at all terminals.

(c) *Terminal accommodations.* (1) All terminals shall be constructed so that accommodations are accessible to handicapped, disabled, blind, and elderly passengers.

(2) All terminal construction or substantial renovation shall conform to the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1–1961 (R1971) approved by the American National Standards Institute, Inc.

§ 1063.9 Identification—bus and driver.

Each bus and driver providing service shall be identified in a manner visible to passengers. The driver may be identified by name or company number.

§ 1063.10 Relief from provisions.

(a) *Petitions.* Where compliance with any rule would impose an undue burden on a carrier, it may petition the Commission either to treat it as though it were conducting a commuter service or to waive the rule. The request for relief must be justified by appropriate verified statements.

(b) *Notice to the public.* The carrier shall display conspicuously, for at least 30 days, in each facility and on each bus affected, a notice of the filing of any petition. The notice shall contain the carrier's name and address, a concise description of and reasons for the relief sought, and a statement that any interested person may file written comments with the Commission (with one copy mailed to the carrier) on or before a specific date that is at least 30 days later than the date the notice is posted.

11. Part 1067 is revised to read as follows:

PART 1067—FITNESS PROCEDURES

Sec.

1067.1 Definition.
1067.2 Intervention by the Department of Transportation.
1067.3 Effect of adverse fitness finding on subsequent application.

Authority: 49 U.S.C. 3102, 10922, 10923, and 10927; 5 U.S.C. 552, 553, and 559.

§ 1067.1 Definition.

Fitness means an applicant's willingness or ability to conform to the Interstate Commerce Act and the regulations of the Interstate Commerce Commission and the Department of Transportation (DOT). (*See* 49 CFR 1160.5(a)(3).)

§ 1067.2 Intervention by the Department of Transportation.

(a) DOT may participate in application proceedings on the issue of fitness (by Memorandum of Agreement between the Commission and DOT, dated April 3, 1967, provision 2) by notifying the applicant and by filing a petition for leave to intervene setting forth generally the nature of the evidence it will present, within 30 days (protest period) of publication of a notice of such application in the *ICC Register.* Applicant may reply within 15 days of such filing. If DOT has not petitioned to intervene, its subsequent participation may be authorized at the Commission's discretion.

(b) This rule does not alter DOT's right to file a formal complaint with the Commission or to petition the Commission to institute on its own motion a formal investigation proceeding regarding a regulated carrier's practices.

§ 1067.3 Effect of adverse fitness finding on subsequent application.

An administratively final adverse fitness determination is not necessarily fatal to a subsequent application, which shall be considered on the same basis as that of any applicant not found unfit. Prior adverse findings may be officially noticed and may be found to bear on applicant's fitness.

PART 1070—HARBORS

12. Part 1070 is amended as follows:

a. The authority citation for part 1070 is revised to read as follows:

Authority: 49 U.S.C. 10541, 10543, 10544, and 10929.

b. Section 1070.1 is amended by adding introductory text and by revising the text of paragraph (a) preceding the map and the text of paragraph (b) preceding the map to read as follows:

§ 1070.1 Harbor limits.

The following harbors, within which transportation in interstate commerce by water is not part of a continuous through movement under common control, management, or arangement to or from a place outside the limits, are exempt from regulation under 49 U.S.C. 10544(a):

(a) *New York, NY.* The waters within the area over which the Port of New York Authority has jurisdiction as shown by the heavy black line in the following map:

* * * * *

(b) *Philadelphia, PA.* The waters within the area enclosed by the heavy black line in the following map:

* * * * *

13. The title for parts 1080–1089 is revised to read as follows:

PARTS 1080–1089—FREIGHT FORWARDERS—GENERAL

PART 1080—[REMOVED]

14. Part 1080 is removed.

15. Part 1081 is revised to read as follows:

PART 1081—BILLS OF LADING

Authority: 49 U.S.C. 10701, 10702, 10730, 10741, 10766, 10927, 11101, and 11707.

§ 1081.1 Bills of lading.

Every household goods freight forwarder (HHGFF) shall issue the shipper through bills of lading, covering transportation from origin to ultimate destination, on each shipment for which it arranges transportation in interstate commerce. Where a motor common carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the HHGFF's name, the HHGFF, upon receiving the shipment at the "on line" or consolidating station, shall issue a through bill of lading on its form as of the date the carrier receives the shipment.

PART 1083—[REMOVED]

16. Part 1083 is removed.

17. Part 1084 is revised to read as follows:

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

Sec.

1084.1 Definitions.
1084.2 General requirements.
1084.3 Limits of liability.
1084.4 Surety bonds and certificates of insurance.
1084.5 Insurance and surety companies.
1084.6 Qualifications as a self-insurer and other securities or agreements.
1084.7 Forms and procedure.
1084.8 Acceptance and revocation by Commission.
1084.9 Fiduciaries.

Authority: 49 U.S.C. 10102, 10321, and 10927; 5 U.S.C. 553.

§ 1084.1 Definitions.

(a) *Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments; and

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to Commission jurisdiction.

(b) *Household goods freight forwarder* (HHGFF) means a freight forwarder of household goods, unaccompanied baggage, or used automobiles.

(c) *Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. The following combinations will be regarded as one motor vehicle:

(1) A tractor that draws a trailer or semitrailer; and

(2) A truck and trailer bearing a single load.

§ 1084.2 General requirements.

(a) *Cargo.* A freight forwarder (including a HHGFF) may not operate until it has filed with the Commission an approriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, for loss of or damage to property.

(b) *Public liability.* A HHGFF may not perform transfer, collection, and delivery service until it has filed with the Commission an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, conditioned to pay any final judgment recovered against such HHGFF for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at 49 CFR 1043.2(b)(2), for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its control in performing such service.

§ 1084.3 Limits of liability.

The minimum amounts for cargo and public liability security are identical to those prescribed for motor carriers at 49 CFR 1043.2.

§ 1084.4 Surety bonds and certificates of insurance.

(a) The limits of liability under § 1084.3 may be provided by aggregation under the procedures at 49 CFR part 1043.

(b) Each policy of insurance used in connection with a certificate of insurance filed with the Commission shall be amended by attachment of the appropriate endorsement prescribed by the Commission (or the Department of Transportation, where applicable).

§ 1084.5 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company that is authorized to issue such bonds or underlying insurance policies:

(a) In each State in which the HHGFF is authorized to operate; or

(b) In the State in which the HHGFF has its principal place of business or domicile, and will designate in writing upon request by the Commission a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the HHGFF operates; or

(c) In any State, and is eligible as an excess or surplus lines insurer in any State in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

§ 1084.6 Qualifications as a self-insurer and other securities or agreements.

(a) *Self-insurer.* The Commission will approve the application of a freight fowarder to qualify as a self-insurer if it is able to meet its obligations for bodily-injury, property-damage, and cargo liability without adversely affecting its business.

(b) *Other securities and agreements.* The Commission will grant applications for approval of other securities and agreements if the public will be protected as contemplated by 49 U.S.C. 10927(c).

§ 1084.7 Forms and procedure.

(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed at 49 CFR part 1043.

(b) *Procedure.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the Commission in triplicate.

(c) *Names.* Certificates of insurance and surety bonds shall be issued in the full name (including any trade name) of the individual, partnership (all partners named), corporation, or other person holding or to be issued the permit.

(d) *Cancellation.* Except as provided in paragraph (e) of this section, certificates of insurance, surety bonds, and other securities and agreements shall not be cancelled or withdrawn until 30 days after the Commission receives written notice from the insurance company, surety, freight forwarder, or other party, as the case may be.

(e) *Termination by replacement.* Certificates of insurance or surety bonds may be replaced by other certificates of insurance, surety bonds, or other security, and the liability of the retiring insurer or surety shall be considered as having terminated as of the replacement's effective date, if acceptable to the Commission.

§ 1084.8 Acceptance and revocation by Commission.

The Commission may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other security or agreement that does not comply with these rules or fails to provide adequate public protection.

§ 1084.9 Fiduciaries.

(a) *Interpretations.* The terms "insured" and "principal" as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a freight forwarder, include the freight forwarder and its fiduciary (as defined at 49 CFR 1043.10(a)) as of the moment of succession.

(b) *Span of security coverage.* The coverage furnished for a fiduciary shall not apply after the effective date of other insurance or security, filed with and accepted by the Commission for such fiduciary. After the coverage shall have been in effect 30 days, it may be cancelled or withdrawn within the succeeding 30 days by the insurer, the insured, the surety, or the principal 10 days after the Commission receives written notice. After such coverage has been in effect 60 days, it may be cancelled or withdrawn only in accordance with § 1084.7(d).

PART 1085 [REMOVED]

18. Part 1085 is removed.

19. Part 1091 is revised to read as follows:

PART 1091—ALASKAN MOTOR-OCEAN-MOTOR (AMOM) SUBSTITUTED SERVICE

Sec.
1091.1 Definition.
1091.2 Tariff information and election of service method.

Authority: 49 U.S.C. 10101–10103, 10301, 10306, 10311, 10321, 10502, 10521, 10561, 10562, 10701–10705, 10708, 10721–10724, 10741–10744, 10761–10763, 10766, 10921, 10922, 10928, 11101, 11102, 11108, 11349, 11501, 11502, 11701, 11702, 11705, 11706, 11708, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C. 553 and 559.

§ 1091.1 Definition

Alaskan Motor-Ocean-Motor (AMOM) Service means the use of a water common carrier subject to the Shipping Act, 1916, as amended, by an irregular-route motor common carrier authorized by the Interstate Commerce Commission to transport property in interstate or foreign commerce between points in Alaska, on the one hand, and, on the other, any point in the contiguous United States, for the movement of its loaded or empty equipment between a seaport in Alaska, on the one hand, and, on the other, a seaport on the West Coast of the contiguous United States.

§ 1091.2 Tariff information and election of service method.

Motor carriers using AMOM Service may publish tariffs setting forth different charges for AMOM and all-highway services. The tariff publications must allow the shipper to choose whether AMOM or all-highway service shall be used, and that, absent an election, the shipment will be transported over the lower-cost service. Tariffs embracing AMOM Service charges, including substituted service directories, if used, shall also set forth the underlying operating rights (overhead) relied upon, the service covered by the published charges, the points of substitution between modes of transportation, and the names of the participating carriers.

PART 1104 [AMENDED]

19a. The authority citation for part 1104 continues to read as follows:

Authority: 19 U.S.C. 10321; 5 U.S.C. 559 and 21 U.S.C. 853a

20. The title of part 1104 is revised to read as follows:

PART 1104—FILING WITH THE COMMISSION-COPIES-VERIFICATION-SERVICE-PLEADINGS, GENERALLY

21. Part 1136 is revised to read as follows:

PART 1136—RAIL PASSENGER CARRIER COMMUTATION OR SUBURBAN FARE INCREASES

Authority: 49 U.S.C. 10321, 10707, and 10708; 5 U.S.C. 559.

§ 1136.1 Filing and service requirements.

A rail passenger carrier proposing commutation or suburban fare increases shall concurrently file appropriate tariffs with the Commission and serve supporting verified statements on the Commission (at its headquarters office and at each Commission office in States affected by the proposal) and on the Governor and appropriate State or County regulatory agency in each affected State, certifying that the notice requirements of 49 CFR 1312.5 have been met.

22. Part 1143 is revised to read as follows:

PART 1143—PREEMPTION OF STATE JURISDICTION: PASSENGER RATES

Sec.
1143.1 Applicability.
1143.2 Commission jurisdiction.
1143.3 Petition.
1143.4 Notification procedures.
1143.5 Opposition; deadlines.
1143.6 Rebuttal.

Authority: 49 U.S.C. 10321 and 11501(e); 5 U.S.C. 553.

§ 1143.1 Applicability.

These rules govern petitions for review, under 49 U.S.C. 11501, of State regulation of rates, rules, and practices of interstate passenger carriers providing intrastate service. (Commission preemption of State jurisdiction over passenger exit is covered at 49 CFR part 1169.)

§ 1143.2 Commission jurisdiction.

If an interstate passenger carrier has requested of a proper State authority permission to establish an increased intrastate rate, rule, or practice and all or part of the request has been denied, or the State has not taken final action (in whole or in part) on the request within 120 days, the carrier may petition the Interstate Commerce Commission for review.

§ 1143.3 Petition.

A petition for review shall include the following:

(a) A cover sheet indicating that the filing is authorized under 49 U.S.C. 11501 and that a decision must be made within 60 days.

(b) One copy of the entire State record, if available, and other, new relevant evidence. (No additional copies of the State record need be furnished for the Commission's use. Copies of the State record need not be furnished to the Governor, State authority, or other parties of record.) If the basis for the petition is State inaction, petitioner shall also submit a statement by counsel or a verified statement by a competent witness that the State has not acted within 120 days after the request.

(c) Other new, relevant evidence and written argument detailing reasons for review.

(d) Certification that the notification procedures at § 1143.4 have been met.

§ 1143.4 Notification procedures.

The petition for review shall be served, no later than its filing date, on the State Governor, the State authority, and on all parties to the State proceeding.

§ 1143.5 Opposition; deadlines.

Opposition statements may be filed as a matter of right by the Governor, the State authority, or by any party to the State proceeding within 15 days after the petition is filed. All others wishing to participate shall file a petition for leave to intervene within 15 days after the filing. Opposition statements and petitions to intervene shall include argument establishing that the State action was reasonable and may also address any new evidence submitted by petitioner. Petitions to intervene shall also explain why an appearance was not entered in the State proceeding but is appropriate in the Commission proceeding.

§ 1143.6 Rebuttal.

Rebuttal to an opposition statement shall be filed within 20 days after the petition is filed. Rebuttal to an intervention petition shall be filed within 10 days after such petition is filed.

23. Part 1161 is revised to read as follows:

PART 1161—ISSUANCE UNDER 49 U.S.C. 10931 OF CERTIFICATES OF REGISTRATION TO SINGLE-STATE MOTOR CARRIERS

Sec.
1161.1 Applicability.
1161.2 Notice.
1161.3 State application proceedings.
1161.4 Application for certificate of registration.
1161.5 Appeal of State decision.
Appendix to Part 1161—Form of Notice of Filing State Applications

Authority: 49 U.S.C. 10321 and 10931; 5 U.S.C. 559.

§ 1161.1 Applicability.

These rules govern applications for Certificates of Registration based on

intrastate certificates issued by a State that concurrently find that the public convenience and necessity require operations in interstate and foreign commerce.

§ 1161.2 Notice.

An applicant for a Certificate of Registration shall notify the appropriate State authority of such filing consistent with its rules. Notice to interested persons will be given by publishing in the *ICC Register* a summary of the authority sought (prepared by the State in the form described in the appendix). The summary must be sent to the Interstate Commerce Commission sufficiently in advance of any State hearing on the application to afford interested persons a reasonable opportunity to be heard. No other notice is necessary, unless required by the State.

§ 1161.3 State application proceedings.

State rules govern the conduct of the State proceeding. Protests and requests for information will be directed to the State. The record in the State proceeding will be made available to the parties upon payment of costs prescribed by the State.

§ 1161.4 Application for certificate of registration.

(a) *Time for filing.* Within 30 days after service of the State certificate (containing the recitations required by 49 U.S.C. 10931), applicant shall file with the Commission an Application for Motor Certificate of Registration, Form OP–OR–100. Except for cause shown, failure to file an application within the 30-day period will waive any right to obtain a Certificate of Registration.

(b) *Notice.* The Commission will give notice of the application's filing date and docket number to the applicant and to all interested persons in the State proceeding.

(c) *Parties.* Any party that opposed the authorization of operations in interstate or foreign commerce in the States proceeding will be considered a party in the Certificate of Registration proceeding. Other persons may participate only upon a showing of good cause.

§ 1161.5 Appeal of State decision.

Any opposing party may file an appeal with the Commission within 30 days after the application for a Certificate of Registration is filed. The appeal should include a certified copy of the complete record made before the State (including a transcript of any testimony taken and any exhibits filed, at the expense of the person appealing, unless the record has already been filed by another party). Applicant may file a reply to an appeal within 20 days. Copies of each appeal and reply shall be served on the State Commission and on all parties to the State proceeding. The filing of an appeal will not affect the institution of intrastate operations under the State certificate. Failure to file an appeal waives further participation in the Certificate of Registration proceeding. The application and related appeals will be handled in a single proceeding. A Commission decision is final.

Appendix to Part 1161—Form of Notice of Filing State Application

Part I

(To be completed by applicant)

Notice is given that applicant has filed with _____

_____

(Name of State Authority)

an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in interstate and foreign commerce within limits which do not exceed the scope of the interstate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

1. _____

(Name and business address of applicant)

_____

(Street) (City) (State)

2. _____

(Name and address of applicant's representative, if any)

_____

(Street) (City) (State)

3. Describe in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such intrastate operations to engage in transportation in interstate and foreign commerce.

_____

(Signature)

_____

(Title)

Date _____ 19——.

Part II

(To be completed by State Authority)

Date for filing application _____

Docket number assigned _____

Date, time, and place application has been assigned for hearing, if known _____

_____

(Signature)

_____

(Title)

_____

(Name of State Authority)

Date this notice forwarded to Interstate Commerce Commission, Washington, DC 20423, _____, 19——.

24. Part 1167 is revised to read as follows:

PART 1167—COMPENSATED INTERCORPORATE HAULING

Sec.

1167.1 Applicability.

1167.2 Notification.

1167.3 Change in participation.

Authority: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

§ 1167.1 Applicability.

Compensated transportation service by a member of a corporate family for other members of the same family (Compensated Intercorporate Hauling or CIH) is exempt from Interstate Commerce Commission regulation if proper notice is given. To qualify for the exemption, the participants must be members of a corporate family in which the parent owns, either directly or indirectly, a 100 percent interest in the subsidiaries. However, no corporation operating chiefly as a for-hire carrier may use an affiliate operating under the exemption of 49 U.S.C. 10524(b) to transport freight tendered to it as a carrier.

§ 1167.2 Notification.

(a) *General requirements.* The corporate parent seeking to initiate CIH must submit a **Federal Register** notice as follows:

Notice of 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 intend 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:

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(b) *Affidavit and declaration.* The notice shall include the following affidavit and declaration (which need not be notarized) by a person legally qualified to act for the parent:

I, _____, affirm that _____ is a corporation which directly or indirectly owns a 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under 49 U.S.C. 10524(b), listed in the attached notice.

I declare under penalty of perjury under the laws of the United States that the foregoing is true.

(Signature and date)

(c) *To whom notice sent.* The original and one copy of the notice of intent to engage in CIH shall be sent to the Commission in an envelope marked: "CIH Notice." The Secretary's Office will issue an acknowledgment indicating whether the submission is in order, and giving a projected publication date. CIH operations may commence as soon as the required date. CIH operations may commence as soon as the required notice is placed in the mails or, if hand-delivered, upon receipt at the Commission's office.

(d) *Cover letter requirement.* Where the office that has prepared a notice for a corporate family differs from the one executing the notice, that office shall be identified in a cover letter attached to the tendered notice.

(e) *Miscellaneous.* The filing of a CIH notice does not initiate a proceeding before the Commission. Publication of a notice is a ministerial function and does not indicate Commission investigation or affirmation of the representations appearing in the notice concerning corporate affiliation nor does it create a right of protest.

(f) *Fees.* All required filings shall include the appropriate fee. See 49 CFR part 1002.

§ 1167.3 Change in participation.

(a) If the parent intends that an additional subsidiary participate in CIH, it shall file an updated notice.

(b) Whenever the corporate parent's interest in a subsidiary participating in CIH becomes less than 100 percent, operations under 49 U.S.C. 10524(b) by or for that subsidiary shall be discontinued and the parent shall file an updated notice within 10 days.

(c) Updated notices shall be submitted in the format required by § 1167.3(a), and will be published in the **Federal Register.**

(d) An updated notice need not be filed where an action by a corporate family affects the status of a member participating in CIH, but the scope of the operations remains unchanged—*e.g.*, absorption of a subsidiary into a parent resulting in extinction of its separate corporate status. However, name changes require an updated notice.

25. Part 1169 is revised to read as follows:

PART 1169—PREEMPTION OF STATE JURISDICTION: PASSENGER EXIT

Sec.

1169.1 Applicability.
1169.2 Petition.
1169.3 Objections.
1169.4 Commission action.
1169.5 Offers of subsidies; continuation of service.

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

§ 1169.1 Applicability.

These rules govern petitions by motor passenger common carriers to discontinue regular-route service over any route to any points in a State, or to reduce the level of service over a route to less than one trip per day (excluding Saturdays and Sundays). (Commission preemption of State jurisdiction over passenger rates is covered at 49 CFR part 1143.)

§ 1169.2 Petition.

The petition shall contain the following information:

(a) On a cover page:

(1) Petitioner's name, "MC" number, and mailing address;

(2) The words "Exit Petition:", followed by the affected State (a separate petition must be filed for each such State); and

(3) The termini of the route(s) on which petitioner proposes to discontinue or reduce service.

(b) Verified statement(s) containing the following information:

(1) Description of petitioner's pertinent operations and how they would be affected by the proposed discontinuance or reduction in service (petitioner must hold both interstate and intrastate authorities over the route(s); copies of such authorities, showing service dates, must be attached);

(2) Certification that petitioner requested the State's approval for the proposed discontinuance or reduction in service (indicating the date of such request), and the State either failed to act within 120 days or denied all or part of the request (a copy of the State decision must be attached); the petition shall be filed within 90 days after the final State action or inaction;

(3) Certification that petitioner is not owned or controlled by a State or local government;

(4) Annual interstate and intrastate passenger and package express revenues generated by the service to be discontinued or reduced (but *not* including revenues which petitioner expects to receive in connection with other services which it will still operate), with an explanation of how the revenues were calculated and of any assumptions underlying the calculation;

(5) Description of the rates and pricing practices applicable to the affected service;

(6) Variable cost of operating the affected service, with an explanation of how the costs were calculated, and of any assumptions underlying the calculation (assumptions should be consistent with those used to estimate revenue);

(7) Description of any current operating subsidies or financial assistance applicable to the affected service, and of any proposals or discussions concerning operating subsidies or financial assistance during the year preceding the filing of the petition; and

(8) Description of other passenger transportation available on the affected route(s).

(c) If petitioner proposes to discontinue service, a request for revocation of its pertinent interstate authority; and

(d) Certification that copies of the petition have been served on:

(1) The Governor of the State in which the transportation is provided;

(2) The appropriate State regulatory body;

(3) Local governments in the affected areas; and

(4) Each party to any related State proceedings.

§ 1169.3 Objections.

(a) The Commission must receive an objection within 20 days after the petition is filed.

(b) The objection must contain at least the following information:

(1) Description of any operating subsidies or financial assistance known to have been offered petitioner to continue the involved service;

(2) Description of the adverse effect the proposed discontinuance or reduction in service would have on the traveling public, on the communities served, or on others; and

(3) Analysis of the interstate and intrastate revenues derived from the service, the pricing practices applied to the service, and the variable costs of operating the service.

(c) Within 15 days after an objection is filed, petitioner must furnish to the Commission and to each objector an estimate of, and data necessary to determine the amount of, any annual subsidy or financial assistance required to continue the service. At the same time, petitioner may file rebuttal.

§ 1169.4 Commission action.

The Commission must take final action on a petition within 90 days after it is filed. The 90-day period will not begin to run until the petition is complete. If no objections are received within 20 days after a complete petition is filed, the Commission will grant the petition and revoke any pertinent interstate authority. The effective date will be 30 days after the decision is served. If timely objections are filed, the Commission will consider the evidence on the written record. There will be no oral hearing. Appeals are governed by 49 CFR 1115.3(b).

§ 1169.5 Offers of subsidies; continuation of service.

(a) Any financially responsible person who intends to offer petitioner an operating subsidy or financial assistance so it may continue providing the service, must notify the Commission and petitioner within 50 days after the petition is filed.

(b) The Commission may order petitioner to continue the affected service for 165 days after the petition is filed—even if permission to discontinue or reduce service is otherwise granted, but before it has become effective—if there is a responsible offer of subsidy or financial assistance that is reasonably likely to induce petitioner to continue the service voluntarily, or if additional time is needed to allow another carrier to take over the involved operations.

26. Part 1170 is revised to read as follows:

PART 1170—EMPLOYEE PROTECTION FOR MOTOR PASSENGER CARRIERS

Sec.

1170.1 Applicability.
1170.2 Application.
1170.3 Opposition.
1170.4 Commission action.
1170.5 List of available jobs.

Authority: 49 U.S.C. 10321; 5 U.S.C. 553; and Pub. L. 97–261, sec. 27.

§ 1170.1 Applicability.

Section 27 of the Bus Regulatory Reform Act of 1982 is designed to protect employees of bus companies who lose their jobs because of reduction or discontinuance of regular-route bus service. These rules govern applications under section 27 by individuals seeking a determination of eligibility for protection. To be eligible for protection in the form of priority in seeking reemployment, the individual must have worked for a bus company on or before September 20, 1980, and have been fired after September 20, 1982 because of a reduction or discontinuance of regular-route bus operations. Furloughed personnel who have a right of recall by their employer are not eligible.

§ 1170.2 Application.

(a) The application shall contain the following information:

(1) The caption "Bus Employment Protection Application", at the top of page one;

(2) The individual's name and address;

(3) The full name and "MC" number of the carrier by whom the individual was employed;

(4) The dates on which the individual's employment with that carrier began and terminated;

(5) The reason(s) for the termination;

(6) The specific discontinuance or reduction of service that caused the termination; and

(7) The individual's occupational specialty.

(b) The lower left corner of the envelope should be marked: "Bus Employment Protection Application:", followed by applicant's full name. (If there is more than one applicant, list only one name and indicate the number of others.)

(c) A copy of the application must be sent to the carrier by whom the individual was employed.

§ 1170.3 Opposition.

(a) Any interested person may contest the application within 20 days after its filing.

(b) A letter or other written statement contesting an application shall include evidence showing that discontinuance or reduction in service was not a contributing factor to the termination of applicant's employment, and/or that the applicant or the circumstances are not covered by the statutory criteria.

(c) The lower left corner of the envelope should be marked: "Bus Employment Protection Opposition:", followed by the applicant's name as prescribed at § 1170.2(b).

(d) Applicant may reply to any opposition within 15 days after it is filed. A motion must be filed within 15 days after the pleading it addresses is filed.

§ 1170.4 Commission action.

A decision disposing of an unopposed application will be served within 30 days after the application is filed. If the application is contested, a decision will be served within 60 days after the application is filed. Appeals are governed by 49 CFR 1115.2.

§ 1170.5 List of available jobs.

(a) Every carrier having annual gross revenues of over $3,000,000 derived from motor passenger common carrier operations shall, and any other motor passenger common carrier may, furnish to any Commission regional office a monthly list of available jobs, unless the carrier has no new job openings. The list must include a job description, job location, and the skills required for each available position.

(b) The Commission will publish and make available at all its offices a comprehensive list of available jobs, entitled *Jobs Available From Class I Motor Passenger Carriers.* A copy of the list will be mailed to each applicant, and to each eligible individual for 6 months following the Commission's determination of his eligibility, subject to renewal at his request. Additional copies will be available by paid subscription. Information may be obtained from the Office of the Secretary, room 2221, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

27. Part 1331 is revised to read as follows:

PART 1331—APPLICATIONS UNDER 49 U.S.C. 10706 TO ESTABLISH OR CONTROL AGREEMENTS BETWEEN OR AMONG CARRIERS

Sec.

1331.1 Form and content of application.
1331.2 Required exhibits.
1331.3 Procedure.
1331.4 New parties to an agreement.
1331.5 Additional standards for retaining antitrust immunity by passenger bus industry rate bureaus.

Authority: 49 U.S.C. 10706 and 10321.

§ 1331.1 Form and content of application.

The application and supporting exhibits shall conform to 49 CFR part 1104 and shall show, in the order and with the paragraph designations indicated, the following:

(a) Full name and business address of the carrier applicant(s); whether each applicant is a corporation, individual, or partnership; if a corporation, the State of incorporation; and if a partnership, the names of the partners and date of the partnership's formation.

(b) Full name and business address of each entity on whose behalf the application is filed and whether it is a corporation, individual, or partnership.

(c) Whether applicant and each entity on whose behalf the application is filed is a rail, motor, or water carrier, a household goods freight forwarder, or express, sleeping-car, or pipeline company.

(d) If the agreement of which approval is sought pertains to a conference,

bureau, committee, or other organization, a complete description of such organization, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations, and a complete description of any working or other arrangement or relationship that such organization has with any other organization. If the agreement is of any other character, a precise statement of its nature and scope and the mode of procedure thereunder.

(e) The facts and circumstances relied upon to establish that the agreement will promote the national transportation policy at 49 U.S.C. 10101.

(f) The name, title, and address of the person to whom correspondence is to be sent.

§ 1331.2 Required exhibits.

There shall be filed with and made a part of each original application, and each copy, the following exhibits:

(a) As Exhibit 1, a true copy of the agreement.

(b) If the agreement pertains to a conference, bureau, committee, or other organization:

(1) As Exhibit 2, a copy of the constitution, bylaws, or other documents or writings specifying the organization's powers, duties, and procedures, unless incorporated in the agreement filed as Exhibit 1;

(2) As Exhibit 3, an organization chart; and

(3) As Exhibit 4, a schedule of its charges to members or a statement showing how the expenses are divided among the members.

(c) As Exhibit 5, opinion of counsel that the application meets the requirements of 49 U.S.C. 10706, with specific reference to any specially pertinent provisions of articles of incorporation or association.

§ 1331.3 Procedure

(a) Applicant shall serve a copy of the application by first class mail upon the regulatory body having jurisdiction over rates, fares, or charges of each State or territory covered by the agreement, and the original application filed with the Commission shall include a certificate naming the bodies upon whom the application has been served.

(b) The Commission will publish in the **Federal Register** a notice that an application has been filed under these rules and indicating how a hearing on the application may be obtained.

(c) A protest to an application should conform to 49 CFR part 1104.

(d) The Commission's general rules of practice govern procedural matters not specifically covered by these rules.

§ 1331.4 New parties to an agreement.

Where a carrier becomes a party to an agreement which has been approved by the Commission, such approval will extend to such carrier upon the filing with the Commission by the carrier or its authorized agent of a verified statement that it has become a party to the agreement, which statement shall show the information prescribed at § 1331.1(b). Such carrier may provide transportation under joint rates or over through routes, but may not otherwise act with carriers of a different class (as defined at 49. U.S.C. 10706(d)).

§ 1331.5 Additional standards for retaining antitrust immunity by passenger bus industry rate bureaus.

(a) Rate bureaus must comply with the terms of their agreements, as approved by the Commission. Failure to do so will result in lack of immunity for that activity.

(b) The bureaus are required to maintain detailed minutes of all meetings where immunized matters are discussed. The bureaus will be subject to withdrawal of their immunity for serious continuing violations of Commission standards, and individual tariff publications will be subject to rejection, suspension, or investigation for improprieties in the rate bureau process.

(c) Absent Commission approval, no other changes may be made in any approved agreement.

(d) For the purposes of the statute, the following definitions shall apply:

(1) A "general increase" is a proposed general adjustment of substantially all the rates published in a rate bureau's tariff(s).

(2) A "broad change in tariff structure" modifies in a relatively non-uniform fashion the relationship between most rates published in a rate bureau's tariff, and applies to a large area, either nationally or regionally.

(3) An "innovative fare" will be determined on a case-by-case basis; the Commission will, on request, issue opinions on whether particular rate proposals may be regarded as innovative. Two examples of an innovative fare are:

(i) A fare for unlimited passenger travel; and

(ii) An experimental fare providing for transportation at the passenger's option over the line of one or more carriers.

(4) A "promotional fare" generally has three characteristics:

(i) Limited duration;

(ii) Attractive price or level of service quality; and

(iii) Some added feature in addition to those normally offered.

[FR Doc. 90-6889 Filed 3-26-90; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 55, No. 59
Tuesday, March 27, 1990

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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 89-152]

Black Stem Rust; Addition to Protected Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Black Stem Rust Quarantine and Regulations by adding the State of Wyoming to the list of States designated as protected areas. This action is warranted because we believe Wyoming meets the criteria for a State to be designated as a protected area. The intended effect is to prevent the reintroduction of rust-susceptible varieties of black stem rust hosts into Wyoming.

DATES: Consideration will be given only to comments received on or before May 29, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89-152. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue, SW., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains known to exist in the United States. The disease is caused by a fungus which reduces the quality and yield of wheat, oats, barley, and rye crops by robbing host plants of food and water. The fungus lives on a variety of host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia,* and can spread from host-to-host by way of wind-borne spores.

In the northern small grain producing states, the black stem rust organism overwinters on wild grasses, grain stubble, and in straw piles. The organism cannot attack small grains in this stage, but will infect *Berberis, Mahoberberis,* and *Mahonia,* plants in the spring. The spores that are subsequently produced on the plants' leaves can spread the disease to nearby grain fields.

The Black Stem Rust Quarantine and Regulations in 7 CFR 301.38 *et seq.* (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia* in order to prevent the development of new races of black stem rust.

The regulations were recently revised to (1) Remove the eradication area provisions, (2) add provisions authorizing the Administrator to designate States or counties as protected areas if they meet certain criteria, and (3) set forth conditions governing the interstate movement of *Berberis, Mahoberberis,* and *Mahonia* (see Docket Number 89-101, 54 FR 32788-32794, August 10,1989).

Under the revised regulations, interstate movement of all *Berberis, Mahoberberis,* and *Mahonia* are allowed from, to, and between non-protected areas without restrictions. Rust-resistant varieties are allowed to move into or through protected areas if accompanied by a certificate verifying that the plants are rust resistant. Interstate movement of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* into or through protected areas is prohibited, except with a limited permit (which is issued under certain circumstances, as described in the regulations). State officials within the protected areas are responsible for issuing the certificates required for interstate movement, and for inspecting every plant nursery within the State at least once each year to ensure that they are free of rust-susceptible plants.

Section 301.38-3(a) of the regulations authorizes the Administrator to designate as a protected area any State that meets certain criteria. First, the State must have eradicated rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* under the cooperative Federal-State eradication program. In addition, the State must employ personnel responsible for issuing and withdrawing certificates in accordance with § 301.38-5, and must maintain and enforce an inspection program under which every plant nursery within a State is inspected at least once each year to insure that the nurseries are free of rust-susceptible plants. During the requisite nursery inspections, all nursery stock must be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis, Mahoberberis,* and *Mahonia,* and that the plants are true to type. Plants that do not meet these criteria must be destroyed. If a nursery within the State raises plants of the genera *Berberis, Mahoberberis,* and *Mahonia* from seed, the State must conduct a visual inspection to verify that no wild or domesticated rust-susceptible plants are growing within one-half mile of the nursery.[4]

Currently Wyoming is not included in the list of protected areas in § 301.38-3(c)(1). Wyoming has notified the Animal and Plant Health Inspection Service that it has eradicated

[4] Persons performing the inspection must be able to recognize rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia.* Inspectors must work side by side, 10 to 20 feet apart, and walk outward, away from the nursery, a distance of one-half mile measured from the edge of the nursery, and observe all plants growing in the half-mile band. The distance between the inspectors may vary within this range depending upon the visibility of plant growth. In areas with low brush and flat terrain, the inspectors may be the maximum distance of 20 feet apart if they can observe all plants growing within 10 feet of them. In areas of high plant growth or hilly terrain, the inspectors must be closer together due to limited or obstructed visibility. Each inspector must observe all plants growing between themselves and the mid-point of the distance between themselves and the next inspector. This process must be repeated so that the entire band, measured from the border of the nursery to the circumference of an imaginary circle having the nursery as its mid-point, is visually inspected in this manner.

susceptible commercial varieties of *Berberis, Mahoberberis,* and *Mahonia* after a cooperative effort and has requested that it be designated as a protected area. We believe that Wyoming meets the criteria necessary to be designated as a protected area. Therefore, we are proposing to add Wyoming to the list of protected areas in § 301.38–3(c)(1).

The intended effect of this action is to prevent the re-introduction of rust-susceptible varieties of black stem rust hosts into Wyoming.

Executive Order 12291 and Regulatory Flexibility Act

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

Current restrictions on the interstate movement of plants of the genera *Berberis, Mahoberberis,* and *Mahonia* are limited to protected areas that include 15 States and part of a 16th. Rust-resistance varieties of these plants would be allowed to move into or through Wyoming if accompanied by a certificate verifying that the plants are rust-resistant. Interstate movement of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* into or through Wyoming would be prohibited, except with a limited permit. Nurseries in Wyoming do not propagate *Berberis, Mahoberberis,* and *Mahonia*; therefore, this proposal would not affect them. Nor are we aware of any shipments of rust-susceptible varities of these species into Wyoming.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Black stem rust, Plant diseases, Plant pests, Plants (agriculture), Quarantine transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR Part 301 as follows:

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, 164–167; and 450; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.38–3 [Amended]

2. In § 301.38–3, paragraph (c)(1) would be amended by removing the word "and" before "Wisconsin" and the period following "Wisconsin" and adding in its place ", and Wyoming.".

Done in Washington, DC, this 21st day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–6892 Filed 3–26–90; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 89–040]

Citrus Canker Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to remove all regulations related to what has been called the Florida nursery strain of citrus canker. Recent scientific reports and articles indicate that the organism that causes this disease is different from *Xanthomonas campestris* pv. *citri*, the bacterium that causes citrus canker, and that the nursery strain disease should not be considered citrus canker. In addition, some of these same scientific reports and articles, as well as our experience in Florida during the past 5 years, indicate that the various forms of Florida nursery strain do not cause a disease dangerous to citrus or other plants or fruit.

Further, we propose to remove from quarantine all areas of Florida outside a portion of Manatee County, where two groves, a residential area, and several other residential properties have had infestations caused by the Asiatic strains of *Xanthomonas campestris* pv. *citri*. The boundaries of the proposed quarantined area encompass, and are at least 5 miles from, the sites of these infestations. No infestations caused by the Asiatic strains have been found outside the proposed quarantined area for at least 2 years. This action, in conjunction with the removal of regulations related to the nursery strain, would relieve restrictions on the interstate movement of citrus and certain other plants, fruit, seeds, and other regulated articles from all areas of Florida except for part of Manatee County.

Designation of less than the entire State as a quarantined area would be contingent upon certain requirements being met concerning inspections, and upon Florida enforcing certain restrictions on the intrastate movement of regulated articles from the quarantined area. We also propose to place some additional restrictions on the interstate movement of regulated articles from and through the proposed quarantined area. These restrictions appear necessary to prevent the interstate spread of citrus canker.

In addition, we propose to remove the "household" restriction on regulated fruit moved interstate from groves of fewer than 10 trees, since this restriction does not appear necessary under the terms of our proposed rule.

DATES: Consideration will be given only to comments received on or before May 29, 1990. The public hearing will be held on April 25, 1990, in Palmetto, Florida.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 29782. Please state that your comments refer to Docket 89–040. Comments we receive may be inspected at USDA, room 1141. South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The public hearing will be held at Kendrick Auditorium, Manatee County Agricultural Center, 1303 17th Street West, Palmetto, Florida.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency

Operations. PPQ, APHIS, USDA, room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 436–6365.

SUPPLEMENTARY INFORMATION:

Public Hearing

A public hearing on this proposed rule will be held in Palmetto, Florida, on April 25, 1990. A respresentatives of the Animal and Plant Health Inspection Service (APHIS) will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other respresentative.

The public hearing will begin at 10 a.m. and is scheduled to end at 5 p.m., local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We request that all persons attending the public hearing register with the presiding officer, and fill out a speakers' registration card on the morning of the hearing between 9 a.m. and 10 a.m. at the hearing room, if they wish to speak. Registered speakers will be heard in the order of their registration. Anyone else who wishes to speak at the hearing will be heard after the registered speakers. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of registered speakers, and other participants at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentation of data, views, and arguments.

Background

Regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75 through 301.75–16, "Subpart-Citrus Canker." These regulations were established in 1984 after several central Florida nurseries were found to be infested with what was thought to be citrus canker caused by a previously undescribed strain of *Xanthomonas campestris* pv. *citri*.

By the end of 1984, plants infected with this new strain, which came to be called the Florida nursery strain, had been found at nine citrus nurseries in Florida. The disease was detected at nine additional nurseries in 1985, at two more in 1986, 3 more in 1987, four more in 1988, and at 29 nurseries in 1989. On three ossasions the Florida nursery strain was found on young nursery trees (resets) that had been moved into citrus groves from infested nurseries.

It should be noted that the term "nursery strain" has come to be used to refer to a group of closely related organisms, "nursery strains," differing primarily in their degree of pathogenicity.

In 1986, the Asiatic form of citrus canker disease was detected in Florida for the first time since it was eradicated from the State in 1927. Since then, infestations caused by Asiatic strains have been found in two commercial graves in Manatee County and several residential areas in Manatee, Pinellas, and Sarasota Counties.

Initially, the regulations did not distinguish between the Asiatic form of citrus canker and the disease caused by the Florida nursery strain. Over time, however, both laboratory research and observations made in the field yielded data suggesting that the Florida nursery strain was different from the Asiatic strains and caused what is now known to be a much less serious citrus leaf spot disease. Based on this growing body of information, we have amended the regulations several times, to reflect the differences between the two types of disease and to ease restrictions related to the Florida nursery strain.

The Florida Nursery Strain: Current Information and Proposed Actions

The Department has recently reviewed published articles and new research reports [1] by scientists indicating that the Florida nursery strain of *Xanthomonas campestris* is sufficiently different from the Asiatic strains of citrus canker (*Xanthomonas campestris* pv. *citri)* to warrant a separate taxonomic placement. In an article published in the *International Journal of Systemic Bacteriology*, scientists proposed that the bacterium causing the Florida nursery disease be called *Xanthomonas campestris* pv. *citrumelo*, and that the disease be called "citrus bacterial spot."[2] Although the taxonomic designation may change after additional research, or in response to comments from the scientific community, the articles, reports, and other information reviewed by the Department clearly indicate that the Florida nursery strain is different from and can be distinguished from *Xanthomonas campestris* pv. *citri*, the cause of citrus canker, and that the disease caused by the nursery strain should be considered citrus canker.

Based on this information, we propose to remove regulations concerning the Florida nursery strain from "Subpart—Citrus Canker."

This information, as well as 5 years of experience in Florida, also indicate that the disease caused by the Florida nursery strain does not appear to be dangerous. All outbreaks of the Florida nursery disease appear to have originated in nurseries; the disease has never originated in a grove or dooryard planting; the disease has never been found to infect fruit-bearing trees in groves, or mature trees of any commercial variety; and the disease, even when incited by one of the more aggressive isolates of nursery strain, appears to be controllable with copper sprays and other currently available management techniques.

Since the disease caused by the Florida nursery strain does not appear to be citrus canker or cause any other disease dangerous to citrus or any other plants or fruit, we propose to remove all regulations related to the Florida nursery strain.

In conjunction with this proposed change to the regulations, we propose to revise the definition of "Citrus canker" (see current § 301.75–1). The proposed definition would not include any reference to the Florida nursery strain, since we no longer consider this organism to cause citrus canker (see proposed § 301.75–1).

Further, we propose to remove from quarantine all areas of Florida outside a portion of Manatee County, where two groves, a residential area, and several other residential properties have had infestations caused by the Asiatic strains of *Xanthomonas campestris* pv. *citri*. This action, in conjunction with the removal of regulations related to the nursery strain, would relieve restrictions on the interstate movement of citrus and certain other plants, fruit, and seeds from all areas of Florida except for part of Manatee County. Designation of less than the entire State as a quarantined area would be contingent upon certain requirements being met concerning inspections, and upon Florida enforcing certain restrictions on the intrastate movement of regulated articles from the quarantined area. These proposed changes to the regulations are discussed below under "Quarantined Area" and "Conditions for Designating Less Than an Entire State as a Quarantined Area."

We also propose to place some additional restrictions on the interstate movement of regulated articles from and

[1] For additional information about these reports and articles, contact the person whose name appears under "FOR FURTHER INFORMATION CONTACT."

[2] Gabriel, D.W., M.T. Kingsley, J.E. Hunter, and T. Gottwald. 1989. Reinstatement of *Xanthomonas citri* (ex Hasse) and *X. phaseoli* (ex Smith) to species and reclassification of all *X. campestris* pv. *citri* strains. *International Journal of Systemic Bacteriology* 39:14–22.

through the proposed quarantined area, and to remove the "household" restriction on regulated fruit moved interstate from groves of fewer than 10 trees. These are discussed in this Supplementary Information under "Interstate Movement of Regulated Articles."

Other proposed changes to the regulations are discussed under "Definitions" and "Miscellaneous."

Quarantined Area

Currently, the entire State of Florida is designated as a quarantined area because of citrus canker (see current § 301.75–3). As indicated above, we propose to remove from quarantine all areas of Florida outside a portion of Manatee County.

Infestations caused by Asiatic strains were detected in four residential areas and one grove in two Florida's Gulf Coast counties, Manatee and Pinellas, in 1986, in two residential areas of Manatee and Sarasota Counties in 1987, and in one residential area and two groves in Manatee County in 1988. The number of individual residential properties being monitored because of infestations has dropped significantly from the high of 266 in 1986. Multiple surveys of residential properties and groves throughout the State, begun in 1984 after detection of the nursery strain in several central Florida citrus nurseries, have found no infestations caused by Asiatic strains outside these three counties. No infestations have been found outside Manatee County within the past 2 years, and those infestations in Manatee County have been confined to the Palmetto-Bradenton area on the county's west coast.

We therefore propose to designate the following portion of Manatee County as a quarantined area: That portion of Manatee County within the boundaries created by the Gulf of Mexico and Tampa Bay; the Manatee County-Hillsborough County line east from Tampa Bay to U.S. Highway 301; U.S. Highway 301 south to Fort Hamer Road; Fort Hamer Road south to the Manatee River; Manatee River west to Interstate 75; Interstate 75 south to Oneco Road; Oneco Road west to 66th Street West; 66th Street West north to Cortez Road; Cortez Road west to Anna Maria Key; and all of Anna Maria Key and School Key, including the entire communities of Anna Maria, Holmes Beach, and Bradenton Beach (see proposed § 301.75–4).

The boundaries of this area encompass, and are at least 5 miles from the site of any infestation that has been active during the past 2 years. Based on information available concerning the natural spread of citrus canker by wind and rain, it appears extremely unlikely that citrus canker would spread naturally from the site of any infestation to an area outside the proposed boundaries. Further, the proposed regulations contain other safeguards, including disinfection of vehicles, equipment, and personnel, to protect against the mechanical spread of the disease.

Conditions for Designating Less Than an Entire State as a Quarantined Area

The current regulations do not contain any provisions for designating less than an entire State as a quarantined area.

Following are the conditions we are proposing for designating less than an entire State as a quarantined area:

Inspections. Although restrictions on the interstate movement of regulated articles from areas outside the proposed quarantined area would be removed, we proposed to continue to require inspections for citrus canker in the following area, which surrounds the quarantined area on the landward sides:

Hillsborough County south of State Highway 672 and west of State Highway 39; Sarasota County south of the Manatee County line, west of Interstate 75, and north of State Highway 72, County Road 789, and an imaginary line extending due west to the Gulf of Mexico; and all of Manatee County outside the quarantined area.

This area includes all of Florida that is currently under special restriction because of the Asiatic strains of citrus canker (the "A-strain area"), minus the proposed quarantined area.

Inspections would have to be conducted as follows:

(1) Every regulated plant and tree, except indoor houseplants and regulated plants and trees at nurseries, would have to be inspected for citrus canker at least once a year, during May 1 through October 31, by an inspector, on foot;

(2) Every regulated plant and tree at every nursery containing regulated trees or plants would have to be inspected for citrus canker by an inspector at intervals of no more than 45 days; and

(3) At every grove producing regulated fruit for interstate movement, an inspector would have to walk through the grove no more than 30 days before harvest begins and inspect every regulated plant and tree.

These requirements appear necessary to ensure the prompt detection of citrus canker, and allow timely action to prevent the interstate spread of citrus canker, should the disease spread beyond the quarantined area.

Intrastate movement of regulated articles. To ensure that citrus canker does not spread beyond the quarantined area to other parts of Florida and subsequently, to other commercial citrus-producing areas of the United States, we propose to require that Florida enforce restrictions on the intrastate movement of regulated articles from the quarantined area. These restrictions would have to be at least as stringent as those on interstate movement of regulated articles from a quarantined area, except as follows:

We propose to allow regulated fruit to be moved intrastate from a quarantined area for processing into a product other than fresh fruit if all of the following conditions are met:

(1) The fruit is accompanied by a document that states the location of the grove in which the fruit was produced, the variety and quantity of fruit being moved intrastate, the address to which the fruit will be delivered for processing, and the date the intrastate movement begin. This documentation would provide a means of tracing the shipment and of ensuring that all fruit in the shipment is delivered for processing.

(2) The fruit, leaves, and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement. This requirement would ensure that potentially contaminated fruit, leaves, or litter are not lost from the vehicle during shipment.

(3) The vehicles, covers, and any containers used to carry the fruit intrastate are treated (as specified in curent § 301.75–12 and proposed § 301.75–11) before leaving the premises where the fruit is unloaded for processing. This requirement would ensure that citrus canker bacteria are not spread by these potentially contaminated vehicles or other articles.

(4) All leaves, litter, and culls collected from the shipment of fruit at the processing facility are either incinerated at the processing facility or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Both incineration and buried would prevent the spread of any citrus canker bacteria that might be present on the leaves, litter, or culls. We believe incineraton should be done at processing facilities to avoid additional intrastate movements of potentially contaminated material. We have proposed that burial be done at public landfills to ensure that conditions of the regulations can be monitored and enforced.

Also, we propose to allow regulated fruit to be moved intrastate from a quarantined area for packing, either for subsequent interstate movement with a limited permit or for export from the United States, if all of the following conditions are met:

(1) The fruit is accompanied by a document that states the location of the grove in which the fruit was produced, the variety and quantity of fruit being moved intrastate, the address to which the fruit will be delivered for packing, and the date the intrastate movement began. This documentation would provide a means of tracing the shipment and of ensuring that all fruit in the shipment is delivered for packing.

(2) The fruit, leaves, and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement began. This documentation would provide a means of tracing the shipment and of ensuring that all fruit in the shipment is delivered for packing.

(2) The fruit, leaves, and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement. This requirement would ensure that potentially contaminated fruit, leaves, or litter are not lost from the vehicle during shipment.

(3) The vehicles, covers, and any containers used to carry the fruit intrastate are treated (as specified in current § 301.75–12 and proposed § 301.75–11) before leaving the premises where the fruit is unloaded for packing. This requirement would ensure that citrus canker bacteria are not spread by these potentially contaminated vehicles or other articles.

(4) At the packing plant, the fruit is stored separately from and has no contact with fruit eligible for interstate movement to commercial citrus-producing areas. Any equipment that comes in contact with the fruit at the packing plant is treated (as specified in current § 301.75–12 and proposed § 301.75–11) before being used to handle any fruit eligible for interstate movement to commercial citrus-producing areas. These safeguards would prevent contamination of any fruit that is eligible for interstate movement to commercial citrus-producing areas.

(5) All leaves and litter collected from the shipment of fruit at the packing house are either incinerated at the packing house or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. All culls collected from the shipment of fruit are either processed into a product other than fresh fruit, incinerated at the packing house, or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Any culls moved intrastate for processing must be completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement, and the vehicles, covers, and any containers used to carry the fruit must be treated (as specified in current § 301.75–12 and proposed § 301.75–11) before leaving the premises where the fruit is unloaded for processing.

These methods of handling leaves, litter, and culls would prevent the spread of any citrus canker bacteria that might be presented on this material, and on any vehicles, covers, or containers used in transporting the material.

These requirements appear adequate to allow regulated fruit to be moved intrastate from a quarantined area for packing or processing without a significant risk of spreading citrus canker.

Interstate Movement of Regulated Articles

The interstate movement of regulated articles from the proposed quarantined area is already subject to special restrictions because of the Asiatic strains of citrus canker. Most of these restrictions would continue to apply. (See current § 301.75–7(e) and proposed §§ 301.75–7 and 8). We also propose to place some additional restrictions on the interstate movement of regulated articles from and through the quarantined area and to remove the "household" restriction on regulated fruit moved interstate from the groves of fewer than 10 trees. These proposed changes are discussed below.

Inspections. In the quarantined area:

(1) Every regulated plant and tree, except indoor houseplants and regulated plants and trees at nurseries, would have to be inspected for citrus canker at least once a year, during May 1 through October 31, by an inspector, on foot; and

(2) Every regulated plant and tree at every nursery containing regulated trees or plants would have to be inspected for citrus canker by an inspector at intervals of no more than 45 days.

At present, the regulations require inspection of groves only if they are producing regulated fruit for interstate movement. The regulations concerning nursery inspections also allow a nursery to be exempt from inspections for citrus canker if the nursery grows regulated plants for use only in a grove maintained by the nursery owner, provided that the fruit produced in the grove is processed within Florida into a product other than fresh fruit. We believe the proposed inspection requirements would ensure that regulatory officials know the extent and location of any infestation, so that appropriate and timely action can be taken to prevent the interstate spread of this disease.

Further, our proposal would require nursery inspections "at intervals of no more than 45 days," rather than "approximately every 45 days," to ensure that inspections are conducted in a timely manner.

Treatment of personnel, vehicles, equipment, and other articles. In the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated trees or plants, or in providing lawn care on any premises containing regulated trees or plants, would have to be treated upon leaving the grove or premises. We also propose to require that all personnel who enter a grove or premises to provide these services be treated upon leaving the grove or premises. (The treatments would be those specified in current § 301.75–12 and proposed § 301.75–11).

The current regulations require treatment of personnel, vehicles, and equipment upon entering and leaving any grove of 10 or more trees that is located in a quarantined area and that is producing fruit for interstate movement. A broader application of this provision appears necessary to prevent the spread of citrus canker from any location where it might be present. Our proposal is intended to require treatment of any personnel, vehicles, equipment, or other articles that could spread citrus canker from one grove or premises to another. Requiring the treatment upon leaving premises appears to be adequate to prevent the spread of citrus canker.

Destruction of infected plants and trees. No more than 7 days after a State or Federal laboratory has confirmed that a regulated plant or tree is infected, the State would have to provide written notice to the owner of the infected plant or tree that the plant or tree must be destroyed. The owner would be responsible for having the plant or tree destroyed within 45 days after receiving the written notice.

The current regulations do not require destruction of infected plants or trees. At the present time, however, destroying infected plants and trees remains the only proven method of eradicating citrus canker. Although other, less severe,

procedures have been reported to reduce or perhaps eliminate sources of infection, the risk of subsequent infestations in the same location, as well as the risk of spread, is greater. Destruction of infected trees and plants would be the fastest and most effective means of eradicating the disease from the State. It also would provide significant protection against spread of the disease until total eradication has been achieved.

We are proposing certain time limits for notification and destruction because we believe infected plants and trees should be destroyed as quickly as possible to minimize the danger of spread. Previous experience in Florida indicates that notification can be accomplished in a week and that a minimum of 30 days may be needed for destruction; 45 days would provide some flexibility without unduly prolonging the process.

We are proposing that the State provide written notice to owners of infected plants or trees because, in most instances, the State would inspect regulated plants and trees in the quarantined area. Analyses of samples suspected of being infected with citrus canker are conducted in State or Federal laboratories. To ensure objectivity and quality control, these laboratories would continue to be the only officially recognized laboratories for diagnosis and confirmation of citrus canker.

Origin of nursery plants. We currently restrict the source of nursery plants for groves of 10 or more trees that are producing regulated fruit for interstate movement and are located with the A-strain area (see current § 301.75–7(e)(3)(ii)). During the year before interstate movement of fruit from these groves, the groves may have received nursery plants only from nurseries inspected and found free of citrus canker. Under the proposed rule, we would continue to require that groves in the quarantined area obtain nursery plants only from nurseries inspected and found free of citrus canker if the nurseries are located in a quarantined area. However, we also would allow the groves to obtain nursery plants from uninspected nurseries located outside the quarantined area. Nurseries outside the quarantined area would present an extremely low risk of being a source of infected plants. Also, under our proposed rule, the restrictions concerning the source of nursery plants would apply to any size grove, not just those with 10 or more regulated trees. This change would provide additional protection against the spread of citrus canker.

We propose to require nursery inspections "at intervals of no more than 45 days," rather than "approximately every 45 days," to ensure that inspections are conducted in a timely manner..

Status of grove. The current regulations state that, during the year before the interstate movement of fruit from any grove in the A-strain area, the grove can not have contained any plants or plant parts infected with citrus canker, and any exposed plants in the grove at high risk for developing citrus canker must have been destroyed (see current § 301.75–7, paragraphs (e)(1)(ii) and (e)(1)(iii)). We propose to extend these requirements to 2 years before the interstate movement for groves in the proposed quarantined area. Two years has been generally accepted as the length of time it may take for visible symptoms of citrus canker to be expressed in a grove after initial exposure.

Regulated fruit moved into a quarantined area for packing. We are proposing to revise the requirements concerning interstate movement of regulated fruit that is produced outside a quarantined area but packed for interstate movement inside a quarantined area (see current § 301.75–6(d) and proposed § 301.75–7(b)). Currently, the fruit may be moved interstate from the quarantined area where it was packed, without a certificate or limited permit, under certain conditions: The point of origin of the fruit must be clearly indicated by shipping documents; the fruit must be packed by a person operating under a compliance agreement; the fruit must be packed under conditions adequate to maintain the identity of the fruit and prevent commingling with any regulated article produced in the quarantined area; and the fruit must be treated. Under these conditions, the fruit may be moved interstate to any part of the United States, including commercial citrus-producing areas.

Under the proposed regulations, the quarantined area would include only a small part of Florida. Most packing houses in the State are outside this area. Under these circumstances, we believe most packing of fruit produced outside the quarantined area could be accomplished outside the quarantined area. Further, to reduce the risk of fruit contamination, we believe fruit destined for commercial citrus-producing areas should be packed outside the quarantined area. Therefore, we propose that regulated fruit produced outside the quarantined area but moved into a quarantined area for packing be allowed to move interstate from the quarantined area only under the terms of a limited permit. That is, the fruit could not be moved interstate to commercial citrus-producing areas of the United States. In addition, the fruit would have to be accompanied to the packing house by a bill of lading stating the location of the grove in which the fruit was produced, the fruit would have to be treated, and the fruit would have to be free of leaves, twigs, and other plant parts, except for stems that are less than one inch long and attached to the fruit.

Household restriction. Currently, regulated fruit produced in groves of fewer than 10 trees may be moved interstate only if the fruit is moved directly to a household, with the intent that the fruit be consumed at, or by members of, that household (see current § 301.75–7, paragraphs (e)(4)(ii) and (e)(5)(iii)). We propose to remove this restriction. As discussed above, our proposed rule would require regular inspection of regulated trees and plants in the quarantined area, and destruction of all infected plants and trees. These requirements, combined with other proposed changes in requirements for moving regulated fruit interstate from a quarantined area, appear to offer sufficient protection against the interstate spread of citrus canker by regulated fruit from any size grove. It does not appear necessary to retain the household restriction on fruit produced in groves of fewer than 10 trees.

Interstate movement of regulated articles through a quarantined area. Currently, regulated articles produced outside a quarantined area may be moved through the quarantined area under certain conditions (see current § 301.75–6(c)). We are proposing additional conditions for these types of movements to ensure that the regulated articles do not become contaminated with citrus canker during movement through a quarantined area (see proposed § 301.75–10). We proposed to require the regulated articles to be moved through a quarantined area without being unloaded and to prohibit any regulated articles from being added to the shipment in the quarantined area. We also propose to require that the regulated articles be completely covered, or enclosed in containers or in a compartment of a vehicle, during movement through a quarantined area. Covering or enclosuing the regulated articles would provide an additional safeguard against the spread of citrus canker from the quarantined area.

Further, we propose to require that the regulated articles be accompanied either by (1) a receipt showing that the

regulated article was purchased outside the quarantined area; or (2) a bill of lading stating the location of the premises where the shipment originated, the type and quantity of regulated articles being moved interstate, and the date the interstate movement began. These documents and this informaton appear necessary to establish the origin of the regulated articles.

Interstate movements with a limited permit. The current regulations allow regulated articles moving interstate with a limited permit to be moved through commercial citrus-producing areas, provided the regulated articles are not unloaded without permission from an inspector (see current § 301.75–6(b)). We propose to add that the regulated articles must be covered, or enclosed in containers or in a compartment of a vehicle, during movement through a commercial citrus-producing area (see proposed § 301.75–2(b)). Covering or enclosing the regulated articles would provide an additional safeguard against the interstate spread of citrus canker to commercial citrus-producing areas.

Definitions

In addition to the proposed change to the definition of "Citrus canker" discussed earlier, we propose to add, remove, and revise a number of terms in § 301.75–1, as follows:

The term "Certificate" would be revised to indicate that this document authorizes interstate movement of a regulated article from a quarantined area into any area of the United States. Similarly, the term "Limited permit" would be revised to indicate that this document authorizes the interstate movement of a regulated article from a quarantined area but restricts the areas of the United States into which the regulated article may be moved. Requirements concerning who may issue certificates or limited permits would be removed from the definitions, since this information is prescriptive and is already set forth in another section of the regulations.

The term "Commercial citrus-producing area" would be added; the definition would refer to those areas listed in the regulations.

The term "Compliance agreement" would be revised to clarify that eligible persons are those engaged in the business of growing or handling regulated articles for interstate movement.

The term "Departmental permit" and "Departmental tag or label" would be added. Departmental permit is an official document of the United States Department of Agriculture authorizing the movement of a regulated article from a quarantined area. A Departmental tag or label is an official tag or label of the United States Department of Agriculture, which, attached to a regulated article or its container, indicates that the regulated article is eligible for interstate movement with Departmental permit.

The term "Exposed" would be revised as follows: "Determined by an inspector to be at risk for developing citrus canker because of proximity during the past 2 years to infected plants, or to personnel, vehicles, equipment, or other articles that may have been contaminated with bacteria that cause citrus canker." The current definition does not refer to proximity to contaminated personnel, vehicles, equipment, or other articles, or to any time period. The proposed reference to contaminated personnel, vehicles, equipment, or other articles is necessary because these are known sources of transmission of citrus canker infection. A time-frame of 2 years is proposed because 2 years has been generally accepted as the length of time it may take for visible symptoms of citrus canker to be expressed in a grove after initial exposure. Specifying this time-frame in the definition would clarify how long a plant or plant part would be considered exposed to citrus canker.

The term "Grove" would be revised to encompass groves of even one tree.

The term "Infested" would be changed to "Infected," a more commonly used term for referring to plants or plant parts that contain disease-causing organisms.

The term "Moved" and "Movement or move" would be revised to read "Move" and "Movement", and the definitions would be revised to remove references to common carriers. The regulations are concerned with movement of regulated articles by any person, not just common carriers.

The term "Own-root-only" would be removed because the term would no longer be used.

The term "Plant Protection and Quarantine" would be removed and the term "Animal and Plant Health Inspection Service" added in its place. Plant Protection and Quarantine is a division of the Animal and Plant Health Inspection Service. We are revising all of our regulations to refer to the agency, rather than to particular divisions of the agency.

We would remove the term "Primary infestation" and redefine "Infestation" to mean only those infestations now described as "primary infestations." That is, "Infestation" would mean "The presence of a plant or plants infected with citrus canker at a particular location, except when the plant or plants contracted the infection at a previous location and the infection has not spread to any other plant at the present location."

Miscellaneous

We propose to remove current § 301.75–9, concerning assembly of regulated articles for inspection. Most inspections conducted under these regulations are performed in groves or nurseries, and all inspections conducted under the regulations are scheduled by State or Federal inspectors. Provisions requiring assembly of regulated articles and notification of an inspector within 48 hours are unnecessary.

We propose to specify that solutions of sodium hypochlorite used for fruit and seed treatment must be maintained at a pH of 6.0 to 7.5. This level of alkalinity is necessary to ensure the effectiveness of the solution against citrus canker bacteria. (See current § 301.75–12(a) and (b) and proposed § 301.75–11(a) and (b)).

We propose to remove current §§ 301.75–13 through 16, which were added in 1985 following a declaration of extraordinary emergency [See 49 FR 41268, October 22, 1984, and 50 FR 9261–9263, March 7, 1985]. The extraordinary emergency concerning citrus canker no longer exists, and the provisions related to the extraordinary emergency are no longer necessary.

In addition, we propose to make a number of editorial changes to clarify requirements and to more clearly present the revised regulations.

Note to Readers

No changes other than section number redesignations are proposed for current §§ 301.75–2, 301.75–4, 301.75–5, and 301.75–11 (proposed §§ 301.75–3, 301.75–5, 301.75–9, and 301.75–14). These sections pertain, respectively, to regulated articles, commercial citrus-producing areas, interstate movement of regulated articles for experimental or scientific purposes, and costs and charges. Therefore, these sections are not set out in the rule portion of this document.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for

consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the potential impact of this proposed rule on small entities. This proposed rule would relieve restrictions on the majority of small entities affected by the current regulations. Some small entities in the proposed quarantined area could incur some additional costs; however, based on an analysis of alternatives, including taking no action, we believe this proposed rule offers the most effective protection against the spread of the Asiatic strain of citrus canker at the least cost to affected small entities. The Federal Plant Pest Act and the Plant Quarantine Act authorize the Secretary of Agriculture to promulgate regulations concerning the importation or interstate movement of fruits and other plant products to prevent the spread of any dangerous plant disease.

General

The citrus canker regulations have had the most impact on Florida citrus growers who sell to the fresh fruit market, and on other entities concerned with producing and marketing fresh fruit. These entities represent a small part fo Florida's citrus industry, since about 80 percent of the regulated fruit produced in Florida is processed, primarily for juice. Much of the remaining 20 percent is consumed within the State or is exported to foreign countries. With few exceptions, the current regulations affect only those entities involved in producing or handling regulated fruit for interstate movement. Under our proposed rule, which would reduce the quarantined area for citrus canker from entire State of Florida to a small area on Florida's Gulf Coast, the number of entities subject to the regulations would be significantly decreased. In addition, State and Federal offices currently responsible for conducting inspections and monitoring compliance with the regulations over a large part of the State could concentrate their resources in a relatively small geographic area on preventing the spread of and eradicating citrus canker associated with the Asiatic strains. Federal regulations on the interstate movement of regulated articles from and through the proposed quarantined area would be removed following eradication of the Asiatic strains.

Removal of Restrictions Pertaining to the Florida Nursery Strains

Our proposed rule would remove all restrictions pertaining to the Florida nursery strains. That is, all restrictions would be removed on the interstate movement of regulated articles, including plants, fruit, and seed, from all parts of Florida outside the proposed quarantined area (part of Manatee County) and a small area adjacent to the quarantined area. In the area adjacent to the quarantined area, the only remaining requirements would be for inspection.

This action would benefit a large number of small entities by removing regulatory burdens associated with the interstate movement of fresh citrus fruit. We estimate that this action would provide regulatory relief for owners of approximately 1,300 commercial groves, 4,000 other groves, 1,000 citrus nurseries (both propagators and non-propagators); and 900 packing houses (about 600 registered packing houses and 300 small gift-fruit packers), the majority of which can be defined as small entities under guidelines established by the Small Business Administration.

We estimate that removing these regulatory burdens would result in the following economic impacts on small entities:

Removing inspection requirements for groves and nurseries outside the proposed quarantined area and a small adjacent area: This action would result in little, if any, economic benefit for affected small entities, because they are not charged for these inspections. The greatest economic benefit would accrue to State and Federal offices, who now are responsible for conducting and monitoring these inspections statewide. The potential cost savings would allow State and Federal offices to concentrate their efforts in one part of the State to prevent the spread of and eradicate citrus canker associated with the Asiatic strains.

Removing fruit treatment requirements: This action could result in some small economic benefit to some small entities preparing regulated fruit for interstate movement. Regulated fruit moving interstate to commerical citrus-producing areas, and regulated fruit moving interstate from the current A-strain area, must now be treated with a chemical disinfectant. Under the proposed rule, regulated fruit produced and packed outside the proposed quarantined area would no longer have to be treated.

Removing restrictions on the source of nursery plants for groves producing regulated fruit for interstate movement: This action could provide economic benefit to some nurseries where the Florida nursery strain is found. These establishments would no longer be prevented by our regulations from supplying plants to groves producing regulated fruit for interstate movement.

Removing restrictions on the interstate movement of regulated seed and plants from outside the proposed quarantined area: This action is unlikely to have a significant economic impact on small entities. Very little regulated seed is moved interstate, and the out-of-state market for regulated plants is limited. In addition to own-root-only calamondin and kumquat plants, which are currently eligible for interstate movement if produced outside the A-strain area, we are aware of only two types of regulated plants that would be moved interstate if the proposed rule is adopted. These are individually packaged lemon and lime plants, sold before the citrus canker quarantines as souvenirs, and citrus trees in large containers, which are used in atriums or other indoor settings. Only two businesses in Florida have expressed an interest in selling the individully packaged lemon and lime plants. A number of nurseries may be interested in moving the container-grown trees interstate. It was not possible for the Department to determine how much income these small entities could derive from the interstate sale of individually packaged lemon and lime plants or the potted plants; however, these types of plants normally constitute a small part of the inventory of those businesses that handle them.

Removing restrictions on the interstate movement of regulated fruit: Under the proposed rules, some groves now ineligible for moving regulated fruit interstate to commercial citrus-producing areas would be able to do so. These are groves that are located within the current A-strain area but outside the proposed quarantined area. We estimate that about 50 of the approximately 450 commercial groves in this area produce regulated fruit for interstate movement and, therefore, could be affected by this action. Also, personnel, vehicles, and equipment used in these groves also would no longer have to be disinfected, resulting in a savings to grove owners of approximately $20–$25 per acre per year. In addition, regulated fruit moved interstate from groves of fewer than 10 trees would no longer be limited to

household destinations. This action is unlikely to have any significant economic impact on small intities, however, since, historically, most regulated fruit from smaller groves has been moved interstate to the northeastern United States as gifts to relatives and friends.

Removing the requirements for certificates and limited permits: Regulated articles could be moved interstate from outside the proposed quarantined area without a limited permit or certificate, removing a paperwork, but not an economic, burden.

Restrictions on the Interstate Movement of Regulated Articles from and through the Proposed Quarantined Area.

A small area of Florida currently under special restriction because of the Asiatic strains would remain under quarantine to prevent the interstate spread of citrus canker. We estimate that there are 5,200 acres of commercial citrus in this area, less than 1 percent of the total citrus acreage in the State (697,929 acres in 1988). Within this area, there are approximately 95 commercial grove owners; 47,000 "dooryard" groves (1–9 trees); 20 citrus nursery propagators (14 containing citrus only); 24 citrus nursery stockdealers; 1 citrus processor; and 7 packing houses (3 major packing houses and 4 small gift fruit packing houses). Most of the dooryard groves are private residential properties and do not produce regulated fruit for sale. Most of the remaining establishment can be classified as small entities under the guidelines established by the Small Business Administration.

The proposed rule would impose some additional restrictions on the interstate movement of regulated articles from and through the proposed quarantined area:

All nurseries in the proposed quarantined areas that contain regulated plants would have to be inspected for citrus canker at intervals of no more than 45 days. The regulations currently allow certain nurseries to be exempted from these inspection requirements. However, all nurseries in the proposed quarantined area are being inspected in accordance with the current regulations. As already noted, there is no charge for these inspections.

All regulated trees and plants (except indoor houseplants) in the quarantined area, other than those at nurseries, would have to be inspected annually for citrus canker. Most groves and other properties in the proposed quarantined areas are already being inspected at least annually, as a result of our current regulations or as the result of surveys conducted by the State. There is no cost to the owner of any grove or other property for these inspections.

All infected plants and trees would have to be destroyed. Except in two instances, all infestations in Florida during the past four-and-a-half years have been dealt with by destroying infected plants and trees. destruction of infested plants and trees could result in a loss to the owner of up to $250 per mature grove tree and $6 to $8 per citrus seedling. However, there is no proven alternative to the destruction of infected material for achieving eradication of citrus canker. Although the costs of destruction may appear to be high initially for an owner whose trees and plants are found to be infected with citrus canker, alternative measures are unlikely to result in any economic savings. Less severe action on infected material, such as repeated defoliation of infected trees, increases the risk that the disease will manifest itself again and spread to other plants and trees. In addition, the use of alternative control measures, such as defoliation, would result in expenses for the owner. Citrus canker left unchecked would not only cause serious damage to the trees, plants, and fruit initially infected, but would result in widespread losses in larger areas. Therefore, we believe that the detection and eradication measures in this proposal would minimize the likelihood of citrus canker infestations, whose numbers have declined steadily since 1986, and the potential economic losses caused by this disease.

In a quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or trees, or in providing lawn care on any premises containing regulated plants or trees, would have to be treated upon leaving the grove or other premises. All personnel who enter the grove or other premises to provide these services also must be treated upon leaving the grove or other premises. Treatment of personnel, vehicles, and equipment is already required under the current regulations in groves of 10 or more trees producing regulated fruit for interstate movement. This action would affect all other grove owners in the quarantined area, as well as operators of lawn care services. We do not know the number of grove owners or lawn service operators that would be affected. The costs to grove owners, estimated at about $20–25 per acre per year, would be a very small percentage of overall production expenses. The cost to owners of lawn services also would be low, an estimated $1–2 per day for materials and hand-held sprayers.

Our proposal to increase, from 1 year to 2 years, the length of time a grove must be free of infected plants before fruit from the grove may be eligible for interstate movement would affect only those groves that have infected plants and that produce regulated fruit for the fresh fruit market. At present, only 2 commercial groves in Manatee County fall into this category. Fruit from these groves would remain eligible for processing, but grove owners could receive less money for the fruit than if they were able to market it as fresh fruit. The difference in price between fruit sold for processing and fruit sold for the fresh fruit market has not been large, however, particularly for Florida oranges and grapefruit, fluctuating during 1987 and 1988 between 4 and 22 percent for oranges and between 30 and 50 percent for grapefruit.

Our proposal to require all groves in a quarantined area that contain regulated trees (not just groves of 10 or more regulated trees) to obtain nursery plants from nurseries inspected and found free of citrus canker, or from nurseries outside the quarantined areas, would have little, if any, impact. All nurseries in the quarantined area are inspected for citrus canker, in accordance with the current regulations, and all of these have been free of infestations caused by the Asiatic strain.

Our proposal would require any regulated fruit produced outside the quarantined area but packed inside the quarantined area to be treated and otherwise subject to the same restrictions as regulated fruit grown in the quarantined area. This action could have a negative economic impact on some growers outside the quarantined area who have contracts with packing houses inside that area. Most growers would not be affected by this action.

Restrictions on Intrastate Movement of Regulated Articles from the Proposed Quarantined Area

As a condition for designating less than the entire State of Florida as a quarantined area, this proposal would require the State to enforce certain restrictions on the intrastate movement of regulated articles from the quarantined area. We estimate that the effects of this action on small entities would be as follows:

The intrastate movement of regulated plants and fruit, except fruit for packing and processing, from the quarantined area would be prohibited. We are aware that a few growers who produce specialty fruit for sale as fresh fruit within the State may be negatively affected by the loss of markets outside

the proposed quarantined areas. We do not have any figures to indicate the extent of the economic effect on these small entities. Other growers could market their fruit within the quarantined area, interstate, or for export. Some citrus nurseries, both propagators and nonpropagators, in the proposed quarantined area may lose customers that are outside this area. It was not possible for the Department to determine the extent or magnitude of these business transactions.

Comments on the Initial Regulatory Flexibility Analysis

We encourage the submission of written comments on our Initial Regulatory Flexibility Analysis, as well as on any other aspect of this proposed rule. Comments should be submitted as indicated under "**DATE**" and "**ADDRESS.**"

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, 7 CFR part 301 would be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Citrus Canker

1. The authority citation would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.75, 301.75–6, 301.75–7, 301.75–9, 301.75–10, 301.75–13, 301.75–14, 301.75–15, and 301.75–16 [Removed]

2. Sections 301.75, 301.75–6, 301.75–7, 301.75–9, 301.75–10, 301.75–13, 301.75–14, 301.75–15, and 301.75–16 would be removed.

§§ 301.75–2, 301.75–3, 301.75–4, 301.75–5, 301.75–8, 301.75–11, and 301.75–12 [Redesignated as §§ 301.75–3, 301.75–4, 301.75–5, 301.75–9, 301.75–13, 301.75–14, and 301.75–11 respectively]

3. Sections 301.75–2, 301.75–3, 301.75–4, 301.75–5, 301.75–8, 301.75–11, and 301.75–12 would be redesignated, respectively as §§ 301.75–3, 301.75–4, 301.75–5, 301.75–9, 301.75–13, 301.75–14, and 301.75–11.

4. Section 301.75–1 would be revised to read as follows:

§ 301.75–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

Animal and Plant Health Inspector Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Certificate. An official document of the United States Department of Agriculture authorizing the interstate movement of a regulated article from a quarantined area into any area of the United States.

Citrus canker. A plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. *citri.*

Commercial citrus-producing area. Any area designated as a commercial citrus-producing area in accordance with § 301.75–5 of this subpart.

Compliance agreement. A written agreement between the Animal and Plant Health Inspection Service and a person engaged in the business of growing or handling regulated articles for interstate movement, in which the person pledges to comply with this subpart.

Departmental permit. An official document of the United States Department of Agriculture authorizing the movement of a regulated article from a quarantined area.

Departmental tag or label. An official tag or label of the United States Department of Agriculture, which, attached to a regulated article or its container, indicates that the regulated article is eligible for interstate movement with a Departmental permit.

Exposed. Determined by an inspector to be at risk for developing citrus canker because of proximity during the past 2 years to infected plants, or to personnel, vehicles, equipment, or other articles that may have been contaminated with bacteria that cause citrus canker.

Grove. Any tree or stand of trees maintained to produce fruit and separated from other trees by a boundary, such as a fence, stream, road, canal, irrigation ditch, hedgerow, open space, or sign or marker denoting change of fruit variety.

Infected. Containing bacteria that cause citrus canker.

Infestation. The presence of a plant or plants infected with citrus canker at a particular location, except when the plant or plants contracted the infection at a previous location and the infection has not spread to any other plant at the present location.

Inspector. An individual authorized by the Administrator to perform the specified duties.

Interstate. From any State into or through any other State.

Limited permit. An official document of the United States Department of Agriculture authorizing the interstate movement of a regulated article from a quarantined area, but restricting the areas of the United States into which the regulated article may be moved.

Move. Ship, carry, transport, offer for shipment, receive for shipment, or allow to be transported by any means.

Movement. The act of shipping, carrying, transporting, offering for shipment, receiving for shipment, or allowing to be transported by any means.

Nursery. Any premises, including greenhouses but excluding any grove, at which plants are grown or maintained for propagation or replanting.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Quarantined area. Any area designated as a quarantined area in accordance with § 301.75–4 of this subpart.

Regulated article. Any article listed in § 301.75–3(a) of this subpart or designated as a regulated article in accordance with § 301.75–3(b) of this subpart.

Regulated fruit, regulated plant, regulated seed, regulated tree. Any fruit, plant, seed, or tree defined as a regulated article.

State. Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

United States. All of the States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

5. A new § 301.75–2 would be added to read as follows:

§ 301.75–2 General prohibitions.

(a) Regulated articles may not be moved interstate from a quarantined area except in accordance with this subpart.

(b) Regulated articles moved from a quarantined area with a limited permit may not be moved interstate into any commercial citrus-producing area, except as follows: The regulated articles may be moved through a commercial citrus-producing area if they are covered, or enclosed in containers or in a compartment of a vehicle, while in the commercial citrus-producing area, and are not unloaded in the commercial citrus-producing area without the permission of an inspector.

(c) Regulated articles moved interstate with a limited permit to an area of the United States that is not a commercial citrus-producing area may not subsequently be moved interstate into any commercial citrus-producing area.

6. Redesignated § 301.75–4 would be revised to read as follows:

§ 301.75–4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas:

Florida

Manatee County. That portion of Manatee County within the boundaries created by the Gulf of Mexico and Tampa Bay; the Manatee County-Hillsborough County line east from Tampa Bay to U.S. Highway 301; U.S. Highway 301 south to Fort Hamer Road; Fort Hamer Road south to the Manatee River; Manatee River west to Interstate 75; Interstate 75 south to Oneco Road; Oneco Road west to 66th Street West; 66th Street West north to Cortez Road; Cortez Road west to Anna Maria Key; and all of Anna Maria Key and School Key, including the entire communities of Anna Marie, Holmes Beach, and Bradenton Beach.

(b) The Administrator may designate any nonquarantined area as a quarantined area in accordance with paragraphs (c) and (d) of this section upon giving written notice of this designation to the owner or persons in possession of the nonquarantined area. Thereafter, regulated articles may be moved interstate from that area only in accordance with this subpart. As soon as practicable, this area will be added to the list in paragraph (a) of this section, or the Administrator will terminate the designation. The owner or person in possession of an area for which designation is terminated will be given written notice as soon as practicable.

(c) Any State or portion of a State where an infestation is detected will be designated as a quarantined area and will remain so until the area has been without infestation for 2 years.

(d) Less than an entire State will be designated as a quarantined area only if all of the following conditions are met:

(1) *Inspections.* In the following area, inspections are conducted as required by paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section: Hillsborough County south of State Highway 672 and west of State Highway 39; Sarasota County south of the Manatee County line, west of Interstate 75, and north of State Highway 72, County Road 789, and an imaginary line extending due west to the Gulf of Mexico; and all of Manatee County outside the quarantined area.

(i) Every regulated plant and regulated tree, except indoor houseplants and regulated plants and regulated trees at nurseries, is inspected for citrus canker at least once a year, during May 1 through October 31, by an inspector, on foot;

(ii) Every regulated tree and regulated plant at every nursery containing regulated trees or regulated plants is inspected for citrus canker by an inspector at intervals of no more than 45 days; and

(iii) At every grove producing regulated fruit for interstate movement, an inspector walks through the grove no more than 30 days before harvest begins and inspects every regulated plant and regulated tree.

(2) *Intrastate movement of regulated articles.* The State enforces restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those on the interstate movement of regulated articles from the quarantined area, except as follows:

(i) Regulated fruit may be moved intrastate from a quarantined area for processing into a product other than fresh fruit if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for processing, and the date the intrastate movement began.

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

(C) The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with § 301.75–11(d) of this subpart before leaving the premises where the regulated fruit is unloaded for processing.

(D) All leaves, litter, and culls collected from the shipment of regulated fruit at the processing facility are either incinerated at the processing facility or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

(ii) Regulated fruit may be moved intrastate from a quarantined area for packing, either for subsequent interstate movement with a limited permit or for export from the United States, if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for packing, and the date the intrastate movement began.

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

(C) The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with § 301.75–11(d) of this subpart before leaving the premises where the regulated fruit is unloaded for packing.

(D) At the packing plant, the regulated fruit is stored separately from and has no contact with fruit eligible for interstate movement to commercial citrus-producing areas. Any equipment that comes in contact with the regulated fruit at the packing plant is treated in accordance with § 301.75–11(d) of this subpart before being used to handle any fruit eligible for interstate movement to commercial citrus-producing areas.

(E) All leaves and litter collected from the shipment of regulated fruit at the packing house are either incinerated at the packing house or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. All culls collected from the shipment of regulated fruit are either processed into a product other than fresh fruit, incinerated at the packing house, or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Any culls moved intrastate for processing must be completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

and the vehicles, covers, and any containers used to carry the regulated fruit must be treated in accordance with § 301.75–11(d) of this subpart before leaving the premises where the regulated fruit is unloaded for processing.

8. A new § 301.75–6 would be added to read as follows:

§ 301.75–6 Interstate movement of regulated articles from a quarantined area; general requirements.

No regulated article may be moved interstate from a quarantined area unless all of the following conditions are met:

(a) *Inspections.*

(1) In the quarantined area, every regulated plant and regulated tree, except indoor houseplants and regulated plants and regulated trees at nurseries, is inspected for citrus canker at least once a year, during May 1 through October 31, by an inspector, on foot.

(2) In the quarantined area, every regulated plant and regulated tree at every nursery containing regulated plants or regulated trees is inspected for citrus canker by an inspector at intervals of no more than 45 days.

(b) *Treatment of personnel, vehicles, and equipment.* In the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees, or in providing lawn care on any premises containing regulated plants or regulated trees, must be treated in accordance with § 301.75–11(d) of this subpart upon leaving the grove or premises. All personnel who enter the grove or premises to provide these services must be treated in accordance with § 301.75–11(c) of this subpart upon leaving the grove or premises.

(c) *Destruction of infected plants and trees.* No more than 7 days after a State or Federal laboratory confirms that a regulated plant or regulated tree is infected, the State must provide written notice to the owner of the infected plant or infected tree that the infected plant or infected tree must be destroyed. The owner must have the infected plant or infected tree destroyed within 45 days after receiving the written notice.

9. A new § 301.75–7 would be added to read as follows:

§ 301.75–7 Interstate movement of regulated fruit from a quarantined area.

(a) *Regulated fruit produced in a quarantined area.* Regulated fruit may be moved interstate from a quarantined area into any area of the United States except commercial citrus-producing areas if all of the following conditions are met:

(1) During the 2 years before the interstate movement, no infestation was found on any property within one-half mile of the grove producing the regulated fruit.

(2) During the year before the interstate movement, the grove producing the regulated fruit received regulated plants only from the following nurseries:

(i) Nurseries located outside any quarantined areas; or

(ii) Nurseries where an inspector has found every regulated plant free of citrus canker on each of three successive inspections conducted at intervals of no more than 45 days, with the third inspection no more than 45 days before shipment.

(3) During the 2 years before the interstate movement, no plants or plant parts infected with citrus canker were found in the grove producing the regulated fruit and any exposed plants in the grove at high risk for developing citrus canker were destroyed. Identification of exposed plants at high risk for developing citrus canker will be based on an evaluation of all of the circumstances related to their exposure, including, but not limited to, the following:

(i) The stage of maturity of the exposed plant at the time of exposure; the size and degree of infestation to which the plants were exposed;

(ii) The proximity of exposed plants to infected plants or contaminated articles at the time of exposure; and

(iii) The length of time the plants were exposed.

(4) No more than 30 days before the beginning of harvest, an inspector walked through the gove, inspected every tree, and found the grove free of citrus canker; and, in groves producing limes, an inspector walked through the grove every 120 days or less thereafter for as long as harvest continued, inspected every lime tree on each walk-through, and continued to find the grove free of citrus canker.

(5) The regulated fruit was treated in accordance with § 301.75–11(a) of this subpart.

(6) The regulated fruit is free of leaves; twigs, and other plant parts, except for stems that are less than one inch long and attached to the fruit.

(7) The regulated fruit is accompanied by a limited permit issued in accordance with § 301.75–12 of this subpart.

(b) *Regulated fruit not produced in a quarantined area.* Regulated fruit not produced in a quarantined area but moved into a quarantined area for packing may be moved interstate from the quarantined area into any area of the United States except commercial citrus-producing areas if all of the following conditions are met:

(1) The regulated fruit was accompanied to the packing house by a bill of lading stating the location of the grove in which the regulated fruit was produced.

(2) The regulated fruit was treated in accordance with § 301.75–11(a) of this subpart.

(3) The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than one inch long and attached to the regulated fruit.

(4) The regulated fruit is accompanied by a limited permit issued in accordance with § 301.75–12 of this subpart.

9. A new § 301.75–8 would be added to read as follows:

§ 301.75–8 Interstate movement of regulated seed from a quarantined area.

Regulated seed may be moved interstate from a quarantined area into any area of the United States if all of the following conditions are met:

(a) During the 2 years before the interstate movement, no plants or plant parts infected with or exposed to citrus canker were found in the grove or nursery producing the fruit from which the regulated seed was extracted.

(b) The regulated seed was treated in accordance with § 301.75–11(b) of this subpart.

(c) The regulated seed is accompanied by a certificate issued in accordance with § 301.75–12 of the subpart.

10. In redesignated § 301.75–9, the heading would be revised to read as follows: "Interstate movement of regulated articles from a quarantined area for experimental or scientific purposes."

11. A new § 301.75–10 would be added to read as follows:

§ 301.75–10 Interstate movement of regulated articles through a quarantined area.

Any regulated article not produced in a quarantined area may be moved interstate through a quarantined area, without a certificate, limited permit, or Departmental permit, if all of the following conditions are met:

(a) The regulated article is accompanied by either: (1) A receipt showing that the regulated article was purchased outside any quarantined areas; or (2) a bill of lading stating the location of the premises where the shipment originated, the type and quantity of regulated articles being

moved interstate, and the date the interstate movement began.

(b) The regulated article is moved through the quarantined area without being unloaded and no regulated articles are added to the shipment in the quarantined area.

(c) The regulated article is completely covered, or enclosed in containers or in a compartment of a vehicle, during movement through the quarantined area.

12. In redesignated § 301.75–11, paragraphs (a) and (b), the introductory text to paragraph (c), and the heading and introductory text of paragraph (d) would be revised to read as follows:

§ 301.75–11 Treatments.

(a) *Regulated fruit.* Regulated fruit for which treatment is required by this subpart must the treated in one of the following ways in the presence of an inspector, or at a facility whose owner operates under a compliance agreement:

(1) The regulated fruit must be thoroughly wetted for at least 2 minutes with a solution containing 200 parts per million sodium hypochlorite, with the solution maintained at a pH of 6.0 to 7.5; or

(2) The regulated fruit must be thoroughly wetted with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2.0 percent of the total solution, for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap to cause a visible foaming action.

Note: Sodium hypochlorite and SOPP must be applied in accordance with label directions.

(b) *Regulated seed.* Regulated seed for which treatment is required by this subpart must be extracted from fruit that has been treated in accordance with paragraph (a) of this section. The regulated seed must then be cleaned free of pulp, immersed for 10 minutes in water heated to 125 °F. (51.5 °C.) or higher, then immersed for at least 2 minutes in a solution containing 200 parts per million sodium hypochlorite, with the solution maintained at a pH of 6.0 to 7.5.

(c) *Personnel.* All personnel for which treatment is required by this subpart must clean their hands using one of the following disinfectants:

* * * * *

(d) *Vehicles, equipment, and other articles.* All vehicles, equipment, and other articles for which treatment is required by this subpart must be cleaned and disinfected by removing all plants, leaves, twigs, fruit, and other plant parts from all areas of the equipment or vehicles, including in cracks, under chrome strips, and on the undercarriage of vehicles, and by wetting all surfaces (including the inside of boxes and trailers), to the point of runoff, with one of the following disinfectants:

* * * * *

13. A new § 301.75–12 would be added to read as follows:

§ 301.75–12 Certificates and limited permits.

(a) *Issuance and withdrawal.*

(1) Certificates and limited permits may be issued for the interstate movement of regulated articles only by an inspector or by persons operating under a compliance agreement.

(2) A certificate or limited permit may be withdrawn by an inspector if the inspector determines that any of the applicable requirements of this subpart have not been met. The decision of the inspector and the reasons for the withdrawal must be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit is withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Administrator must grant or deny the appeal in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(b) *Attachment and disposition.* (1) Certificates and limited permits accompanying regulated articles interstate must be attached during the interstate movement to one of the following:

(i) The outside of the regulated article, if the regulated article is not packed in a container; or

(ii) The outside of the container in which the regulated article is packed; or

(iii) The consignee's copy of the accompanying waybill, but only if the regulated article is described on the certificate, limited permit, or waybill in a way that allows the regulated article to be identified.

(2) Certificates and limited permits accompanying regulated articles interstate must be given to the consignee at the point of destination.

14. Redesignated § 301.75–13 would be revised to read as follows:

§ 301.75–13 Compliance agreements.

(a) *Eligibility.* Any person engaged in the business of growing or handling regulated articles for interstate movement may enter into a compliance agreement with the Animal and Plant Health Inspection Service to facilitate the interstate movement of regulated articles in accordance with this subpart. Compliance agreements may be arranged by contacting a local office of Plant Protection and Quarantine, Animal and Plant Health Inspection Service (listed in local telephone directories), or by contacting the Administrator, c/o the Operational Support Staff, PPQ, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(b) *Cancellation.* Any compliance agreement may be cancelled orally or in writing by an inspector if the inspector finds that the person who entered into the compliance agreement has failed to comply with this subpart. If the person is given notice of cancellation orally, written confirmation of the decision and the reasons for it must be provided as promptly as circumstances allow. Any person whose compliance agreement is cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Administrator must grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

Done in Washington, DC, this 21st day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–6893 Filed 3–26–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–12–AD]

Airworthiness Directives; S.N. Centrair Model 201B Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain S.N. Centrair Model 201B gliders, which would require a visual inspection of the rear cockpit airbrake handle for any distortion or cracks, and a determination of adequate thickness of lower airbrake handle arms. The FAA has become aware of a report of cracks in this handle. The proposed actions will preclude a failure of the airbrake handle during a critical phase of flight.

DATES: Comments must be received on or before May 14, 1990.

ADDRESSES: S.N. Centrair Service Bulletin 201–07, dated February 14, 1990, applicable to this AD, may be obtained from S.N. Centrair Aerodrome FFN 44 36300 La Blanc, France. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. James Kishi, Flight Test Pilot, Aircraft Certification Service, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; or Mr. Carl Mittag, Aerospace Engineer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has become aware of one report of a rear cockpit airbrake handle having distortion and cracks occurring in service on a S.N. Centrair Model 201B glider. As a result, S.N. Centrair has issued S.N. Centrair Service Bulletin 201–07, dated February 14, 1990, which requires visual inspection of the rear cockpit airbrake handle for any distortion or cracks, and a check for adequate thickness of the airbrake handle lower arms. Any defective parts must be replaced with serviceable parts. The French Direction Generale De L'Aviation Civile (DGAC) has also issued an AD on this subject. The DGAC, which has responsibility and authority to maintain the continuing airworthiness of these gliders in France, has classified this S.N. Centrair Service Bulletin 201–07 and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected gliders. On gliders operated under French registration, this action has the same effect as an AD on gliders certified for operation in the United States. The FAA relies upon the certification of the DGAC combined with FAA review of pertinent documentation in finding compliance of the design of these gliders with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of S.N. Centrair Service Bulletin 201–07, dated February 14, 1990, and the mandatory classification of this Service Bulletin by the DGAC. Based on the foregoing, the FAA believes that the condition addressed by this Service Bulletin is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require a one time visual inspection of the S.N. Centrair Model 201B gliders rear cockpit airbrake handle for any distortion or cracks, and a determination that the thickness of the airbrake handle lower arms is adequate in accordance with the Service Bulletin.

The FAA has determined there are currently no gliders on the U.S. registry affected by the proposed AD. The cost of visually inspecting the rear cockpit airbrake handle per the proposed AD is estimated to be $40 per glider. At this time, there will be no cost associated with the proposed AD. Should some of these gliders become registered in the U.S. in the future, the cost for inspection of the U.S. fleet will not have a significant economic effect on any small entity.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C 1354(a), 1421 and 1423;

49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

S.N. CENTRAIR: Applies to Model 201B (Serial Numbers 201026 thru 201077) gliders certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished. To assure that the airbrake is properly functioning, accomplish the following:

(a) Visually inspect the rear cockpit airbrake handle for any distortion or cracks per the instructions in S.N. Centrair Service Bulletin (SB) No. 201–07, dated February 14, 1990.

(b) Determine that the airbrake handle lower arm has a minimum adequate thickness of 1.5 mm or cannot be inserted into the thickness gauge provided by Centrair per S.N. Centrair SB No. 201–07, dated February 14, 1990.

(c) Prior to flight, replace any distorted, cracked, or undersized parts with serviceable parts in accordance with the applicable manufacturers Maintenance Manual.

(d) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30 extension 2710/2711.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to S.N. Centrair Aerodrome FFN 44 36300 La Blanc, France; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 15, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–6860 Filed 3–26–90; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–162; FCC 90–100]

Television Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is instituting a new rulemaking proceeding to evaluate the financial interest and syndication rules which relate to television networks' involvement in the programming marketplace. The purpose of the rulemaking proceeding is to undertake a review of the rules and consider comments on possible amendments to the rules.

DATES: Comments will be due June 14, 1990 and reply comments will be due August 1, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judy Herman, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: By the Commission: Chairman Sikes issuing a statement; Commissioner Marshall dissenting in part and issuing a separate statement; Commissioner Duggan dissenting and issuing a dissenting statement.

1. On January 30, 1990, Fox Broadcasting Company (Fox) filed in BC Docket No. 82–345 a Petition for Resumption of Rulemaking and Request for Relief (Petition). After reviewing the Fox Petition and responsive pleadings, in a separate Order adopted today, we are terminating BC Docket No. 82–345.[1] By this notice of proposed rulemaking, we are instituting a new rulemaking proceeding to evaluate the financial interest and syndication rules. The Fox Petition and responsive pleadings will be incorporated into the record of this proceeding.[2]

2. *Background.* The financial interest and syndication rules were adopted in 1970.[3] The rules prohibit television broadcast networks from (1) purchasing any financial interest in a program other than the right to air the program on the network and (2) syndicating (or having an interest in the syndication of) any programs for non-network distribution, except that network syndication outside the United States of network-owned programs is permitted. *See* 47 CFR 73.658(j). In 1982, the Commission proposed eliminating the rules.[4] A year later, the Commission tentatively concluded that the rules should be substantially revised.[5] Specifically, the Commission concluded that it should eliminate the financial interest rule and narrow the syndication rule to prohibit only network participation in domestic syndication of prime time series programs. Subsequently, the Commission encouraged interested parties to negotiate a proposed solution to the complex issues involved. This approach did not work, and as stated in our companion Order, we have determined that the best way for the Commission again to begin actively considering whether any changes in the rules are necessary is to terminate BC Docket No. 82–345 and begin this new rulemaking proceeding.

3. *Proposal.* We seek comment on a wide variety of proposals with respect to the financial interest and syndication rules. Specifically, we request comment on the following options: (a) Retaining the existing rules intact; (b) eliminating the financial interest rule but retaining the syndication rule intact; (c) eliminating the financial interest rule and modifying the syndication rule as proposed in the Tentative Decision in BC Docket No. 82–345; (d) eliminating the financial interest rule and modifying the syndication rule to permit networks to syndicate a certain number or percentage of programs or to participate in a share of the profits of programs syndicated by others; and (e) retaining the existing rules but adding an exception for emerging networks, *e.g.*, by changing the definition of network in 47 CFR 73.658(j)(4). We also seek comment on alternative proposals regarding the financial interest and syndication rules.

4. *Industry Negotiations/Comment Period.* We believe it is in the public interest to provide interested parties one final short opportunity to negotiate a proposed solution to the issues presented by the financial interest and syndication rules. Accordingly, while we are not designating an FCC staff person (or requesting any other Government employee) to participate in negotiations, we are deferring the beginning of the

[1] *Order*, FCC 90–99, adopted March 14, 1990.

[2] Fox's request for temporary relief will be addressed in a separate non-docketed proceeding.

[3] *Report and Order in Docket No. 12782*, 23 FCC 2d 382, *on reconsideration*, 25 FCC 2d 318 (1970), *aff'd sub nom. Mt. Mansfield Television, Inc. v. FCC*, 442 F.2d 470 (2d Cir. 1971).

[4] *Notice of Proposed Rulemaking in BC Docket No. 82–345*, 47 FR 32,959 (1982).

[5] *Tentative Decision and Request for Further Comments in BC Docket No. 82–345*, 94 FCC 2d 1019 (1983).

comment cycle. Comments will be due June 14, 1990. Reply comments will be due August 1, 1990.[6] We do not anticipate extending the period for negotiations. Regardless of whether an industry-negotiated proposed solution is filed, we intend to move expeditiously to reach a decision upon termination of the comment cycle. If a proposed solution is filed, parties will either be able to respond to it in their reply comments or, if appropriate, the Commission will issue a Further Notice of Proposed Rulemaking.

5. *Ex Parte Rules.* In order to facilitate any final industry attempt at negotiations, ten calendar days after release of this notice of proposed rulemaking, *i.e.*, beginning on March 24, 1990, this proceeding is designated a restricted proceeding under the Commission's *ex parte* rules through June 13, 1990. *See* 47 CFR 1.1200(a). During that period, *ex parte* presentations to or from Commission decision-making personnel will be prohibited. *See* 47 CFR 1.1208.[7] We will, however, make one exception. The proceeding will be treated as non-restricted on June 4, 1990, so that industry negotiators may report to the Commission on any progress toward a negotiated proposed solution. Any oral progress reports must be summarized in a written submission for the record; any written progress reports must be submitted for the record. *See* 47 CFR 1.1206. After June 13, 1990, the proceeding will become a non-restricted proceeding, in which *ex parte* presentations will be permissible, subject to the disclosure requirements set forth in the Commission's rules. *See* 47 CFR 1.1206.

6. An Initial Regulatory Flexibility Analysis is contained in the Appendix to this Notice of Proposed Rulemaking.

7. Authority for issuance of this Notice of Proposed Rulemaking is contained in sections 4(i), 4(j), 301, 303(i), 303(r), 313 and 314 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(i), 303(r), 313 and 314.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix—Initial Regulatory Flexibility Analysis

Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding whether marketplace developments should lead the Commission to make changes in its financial interest and syndication rules. *See* 47 CFR 73.658(j).

Objectives

The Commission seeks to evaluate its financial interest and syndication rules in light of marketplace developments so that it can ensure that rules in this area maximize the development of a competitive video marketplace that best serves the public interest.

Legal Basis

The proposed action is authorized under sections 4(i), 4(j), 301, 303(i), 303(r), 313 and 314 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(i), 303(r), 313 and 314.

Reporting, Recordkeeping and Other Compliance Requirements

None.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

Any rule changes in this proceeding could affect television program producers, television networks and their affiliate stations, non-network television stations, cable networks, cable television program producers, cable television networks and cable television operators. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives.

The Notice solicits comments on a variety of alternatives.

[FR Doc. 90-6612 Filed 3-26-90; 8:45 am]

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47 CFR Part 73

[BC Docket No. 82-345; FCC 90-99]

Television Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This Order terminates BC Docket No. 82-345, regarding the financial interest and syndication rules, which relates to television networks' involvement in the programming marketplace. The Commission has determined that this action, combined with institution of a new rulemaking proceeding in MM Docket No. 90-162, will best serve the public interest. The effect of this action is that possible changes in the rules will no longer be considered in this proceeding.

DATES: This withdrawal is effective on March 14, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judy Herman, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: 1. On January 30, 1990, Fox Broadcasting Company (Fox) filed in this docket a Petition for Resumption of Rulemaking and Request for Temporary Relief (Petition). After reviewing the Fox Petition and responsive pleadings, we are hereby terminating this proceeding. In a separate Notice of Proposed Rulemaking, also adopted today, we are instituting a new rulemaking proceeding to evaluate the financial interest and syndication rules.[1]

2. *Background.* More than six and a half years ago, the Commission tentatively concluded that it would be in

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[6] Procedures regarding the filing of comments are set forth in §§ 1.415 and 1.419 of the Commission's Rules. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

[7] Ten calendar days after release of this notice of proposed rulemaking and the companion Order, *i.e.*, beginning on March 24, 1990, the proceeding involving the temporary relief aspect of the Fox Petition is also designated a restricted proceeding, as is any reconsideration proceeding in BC Docket No. 82-345. *See Order*, FCC 90-99, adopted March 14, 1990.

[1] *Notice of Proposed Rulemaking in MM Docket No. 90-162*, FCC 90-100, adopted March 14, 1990. Fox's request for temporary relief will be addressed in a separate non-docketed proceeding. We note that, with one limited exception, the new rulemaking proceeding is designated a restricted proceeding under the Commission's *ex parte* rules ten calendar days after release of the Notice of Proposed Rulemaking, *i.e.*, beginning March 24, 1990, through June 13, 1990. Because the issues are interrelated, except for any formal petitions for reconsideration and responsive pleadings, any reconsideration proceeding in this docket is also designated as restricted ten calendar days after release of this Order, *i.e.*, beginning March 24, 1990, through June 13, 1990. *See* 47 CFR 1.1200(a), 1.1208.

the public interest to adopt a "very substantial revision" in the financial interest and syndication rules. *Tentative Decision and Request for Further Comments*, 94 FCC 2d 1019, 1022 (1983). Specifically, the Commission tentatively concluded that it should eliminate the financial interest rule and narrow the syndication rule to prohibit only network participation in domestic syndication of prime time series programs. Subsequently, the Commission encouraged interested parties to negotiate a proposed solution to the complex issues involved. No further action has been taken by the Commission.

3. *Basis For Decision.* The Commission has a public interest responsibility to evaluate whether there is a need to change its rules and policies as the communications marketplace changes. Although the Commission is determined to press the negotiations forward, it is apparent at this point that permitting extended industry negotiations toward a proposed solution to this proceeding has not, so far, been successful. The Commission has determined that it is appropriate for us again to begin actively considering whether any changes in the syndication and financial interest rules are needed. The numerous developments in the video marketplace in the last six and a half years convince us that it would not be appropriate to take any action based on the existing record. Rather than simply issuing a Further Notice of Proposed Rulemaking in this docket, however, we have chosen for two reasons to terminate this proceeding and begin a new one. First, our analysis of potential options will be sharpened by a record focusing on existing and future marketplace realities rather than one including voluminous materials that are outdated and may therefore be misleading. Second, this approach will maximize the possibility that the final short round of industry negotiations we are encouraging in MM Docket No. 90–162 will lead to fruitful results.

4. Accordingly, pursuant to sections 4(i), 4(j), 301, 303(i), 303(r), 313 and 314 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(i), 303(r), 313 and 314, *it is ordered* that this proceeding IS TERMINATED.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–6613 Filed 3–26–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 386

[FHWA Docket No. MC–90–5]
RIN 2125–AC36

Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings; Penalties for Failure to Comply With Notices and Orders Issued Under the Authority of 49 U.S.C. 521(b)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal is intended to implement Sec. 213(b) of the Motor Carrier Safety Act of 1984 by adding a penalty schedule to 49 CFR part 386 applicable to failure to comply with notices and orders issued under the authority of section 521(b) of title 49, United States Code, These penalties would apply in addition to other civil forfeiture assessments for violations of the Federal Motor Carrier Safety Regulations (FMCSRs) charged in a Notice of Claim or Notice of Investigation, and are intended to promote more immediate compliance. Comments are sought both on the purpose of the new penalties and on the levels proposed.

DATES: Comments must be received on or before May 29, 1990.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–90–5, room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m, e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366–0834, Or Mr. Sam Rea, (202) 366–1795, Office of Motor Carrier Safety Field Operations, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: .

1. Background

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, October 30, 1984, 98 Stat. 2832) (MCSA) amended section 521(b) of title 49, United States Code, by substantially changing the civil and criminal penalties that may be charged for violations of motor carrier safety regulations issued under the authority of MCSA and 49 U.S.C. 3102. The section was further amended in the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–184) (CMVSA) to provide for penalties for violations of regulations issued under that Act's authority. Section 521(b) now authorizes five categories of civil penalties for safety violations and sets maximum amounts for each category. These are: (1) Recordkeeping requirements—$500 per violation and $500 for each day the violation continues up to a maximum of $2,500; (2) serious patterns of safety violations—$1,000 per violation up to maximum of $10,000 per pattern; (3) substantial health and safety violation—$10,000 per violation; (4) nonrecordkeeping violation against employees were gross negligence or reckless disregard for safety is shown—$1,000; and (5) commercial drivers license violations—$2,500 per violation. Paragraph (6) of section 521(b) establishes criminal penalties for knowing and willful violations of the same regulations.

Section 521(b) also authorizes the issuance of notices and orders, and specifically directs the Secretary to establish additional penalties for their violation. The Act provides in paragraph (7) of that section the following:

> The Secretary shall issue regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection

The Federal Highway Administration interprets this paragraph to authorize penalties over and above those assessed for specific violations of the motor carrier safety regulations, for failure to comply with an authorized notice or order, and discretion to fix the level of such penalties. This NPRM therefore identifies the notices and orders authorized in section 521(b), and proposes a penalty schedule for failure to meet the substantive or timing requirements provided therein. The FHWA intends to employ the notices and orders authorized in section 521(b) as additional tools to deal with persistent violators of the safety standards. The penalties proposed are intended to be set at a level that would make it very costly for carriers to continue to perpetrate or tolerate violations for which they have been penalized and have received specific notices to cease. In the extreme case where a carrier have been ordered to

cease operating in whole or in part because his continued operation creates an imminent hazard, this proposal would set the highest per diem penalty for failure to abide by the order. In every case, the penalty is intended to exact prompt compliance as provided in section 521(b)(7).

The FHWA is seeking comment both on what is to be accomplished by the notices and orders, and the level of penalties proposed to enforce them. It is our objective to establish a level of penalty that will meet the statutory need to induce immediate compliance without imposing a level that is so onerous as to be unreasonable in this context. The FHWA is interested in the reaction of industry on this approach.

2. Notices and Orders

The FHWA has identified the following four types of notices or orders authorized or required by section 521(b):

- Notice to Abate
- Notice to Post
- Final Orders
- Out-of-Service Orders

Each of these notices and orders is discussed below together with the penalties proposed.

a. Notice to Abate

Paragraph (1) of section 521(b) outlines the process by which a civil penalty is initiated and ultimately adjudicated. A written notice is served on the violator describing with reasonable particularity the nature of the violation and the provision violated, as well as specifying the proposed civil penalty, and affording the violator an opportunity, upon timely request, to contest the claim through an administrative proceeding. This is the same function as has been served, under present regulations, by the Notice of Claim (Claim Letter) or Notice of Investigation. In addition, paragraph (1) also requires that the "notice shall fix a reasonable time for abatement of the violation * * * and suggest actions which might be taken in order to abate the violation." Fixed period for abatement of safety violations were not provided for in preexisting rules, but were added to the Rules of Practice for Motor Carrier Safety (49 CFR part 386 (1988)) only after enactment of MCSA and for the specific purpose of implementing the abatement provision. The FHWA has determined that the requirement for fixing a reasonable time for abatement contemplated that there would be an additional penalty imposed under section 521(b) for failing to comply. For example, the Notice to Abate recordkeeping violations will often deal with record systems, such as the driver qualification files and the drivers' records of duty status which may involve many individual records. Failure to abate as directed, however, is a distinct violation encompassing all records addressed in the notice.

The FHWA is therefore proposing to amend § 386.11 to make it clear that a Notice to Abate is a separate requirement, and that failure to comply with such notice is itself a violation of the notice and carries a separate penalty.

Penalty: The authorizing statute requires that the penalty must be designed "to induce timely compliance." For example, the civil penalty authority in section 521(b)(2)(A) with respect to recordkeeping violations provides a penalty of up to $500 per day for each offense, but limits the total penalty for any such offense to $2,500. The FHWA has determined that no such limit applies to the discretionary penalty authority for violations of orders. Failure to abate as ordered in a Claim Letter or other notice initiating an enforcement proceeding, therefore, would carry a progressively increasing penalty based on the type of violation and the duration of the continuing violation after the expiration of a reasonable period for abatement.

(1) The proposed penalty for failing to abate a *recordkeeping violation* is $100 per day per violation for the first five days, increasing by $100 per day per violation for each five-day period thereafter up to a maximum of $500 per day and an overall maximum of $7,500. For example, failure to maintain certain information in qualification files on drivers used in interstate commerce is a violation of 49 CFR 391.51. The violations are discovered on June 1, and a Notice of Claim for the penalty assessed for the violations discovered is issued on June 10, along with a Notice to Abate directing the employing motor carrier to complete the files by June 30.

The 20 days should not be considered a grace period, as a penalty is being assessed for the violations discovered. The period is merely a reasonable time to come into compliance before additional and more severe action will be taken.

A review is conducted on July 21 indicating that drivers are currently being used to operate in interstate commerce, but the employer has done little or nothing about the missing information in the driver qualification files, which may involve several drivers and many records. Violations have continued 21 days beyond the date they were to be abated. The penalty for failure to abate as directed, i.e. come into substantial compliance would then be $100 per day of the first 5 days, $200 per day for the second five days, $300 per day for the third 5 days, $400 per day for days 16 through 20, and $500 for day 21, for a total of $5,500. If future review determines the violation still was not abated, the potential penalty would continue at $500 per day up to an overall maximum of $7,500.

The original Notice to Abate contained in a Claim Letter or Notice of Investigation will specify the action and the timing necessary to achieve abatement. After a respondent has been cited and assessed a penalty for violations of recordkeeping requirements, and is directed to correct the violations by taking actions specified in the notice, failure to comply is tantamount to a willfull disregard for the law, justifying additional penalties.

(2) For continuing violations constituting *serious patterns of safety violations,* the proposed penalty for failure to abate as ordered is $500 per day per violation for the first ten days and $1,000 per day per violation thereafter. No cap on the accruing penalty is presently being proposed as the increased severity of the penalty in these cases is consistent with the increased hazard related to the continuing safety violations, and the need to bring about immediate compliance.

(3) The proposed penalty for failure to abate a *substantial health or safety violation* is $2,500 per day per violation for the first five days, $5,000 per day per violation thereafter. By definition, such violations could reasonably lead to, or have resulted in, serious personal injury or death. The higher penalty for failure to abate such violations is justified by the greater risk occasioned by allowing the violation to continue, and no cap is being proposed.

(4) For continuing *violations of the CMVSA,* or the commercial driver's license regulations issued thereunder, beyond the period of abatement the proposed penalty is $1,000 per day per violation. In such cases, the safety violation itself subjects the violator to a maximum penalty of $2,500 per offense. Such penalties would include operating or using a driver while unlicensed or while disqualified. Failure to abate as specifically directed in such cases would amount to deliberate defiance of the law and regulations.

b. Notice of Post

Paragraph (3) of section 521(b) authorizes the Secretary to "require any violator served with a notice of violation to post a copy of such notice or statement of such notice in such place or

places and for such duration as the Secretary may determine appropriate to aid in the enforcement" of the controlling statutes.

The FHWA has rarely employed this tool in its enforcement of the FMCSRs, but will use it in future cases in appropriate situations. The Notice to Post will be contained in either the notice initiating the enforcement action or in any order issued thereafter. The purpose is to call attention to the safety violations to all of the motor carrier's staff and employees, to encourage implementation of remedial action, and to assure that future violations are reported. The FHWA anticipates that this type of notice will be used sparingly, and the specific objective would be contained in the notice, as well as the consequences of failing to post.

Penalty: The proposed penalty for failing to post for the time and in the manner prescribed is $500. A separate penalty may be assessed each time a violation of the notice is discovered.

c. Final Orders

Section 521(b)(1) provides:

* * * * In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5, following which the Secertary shall issue an order affirming, modifying, or vacating the notice of violation.

Under percent procedural rules in 49 CFR part 386 (1988), persons charged with regulatory violations, who contest such charges, are afforded an opportunity for a hearing before an administrative law judge only when material factual matters are in dispute. If an oral hearing is not requested, the matter is finally resolved by the Associate Administrator for Motor Carriers based on the record presented on behalf of the agency and the respondent. If an oral hearing is conducted, the administrative law judge issues a decision, which is subject to review by the Associate Administrator. In any event, the ultimate disposition is contained in a Final Order affirming, modifying, or vacating the notice of violation. The Final Order may contain a requirement to pay a penalty within a prescribed period of time, or such further relief as may be appropriate.

Penalty: Failure to comply with the terms of a Final Order is considered a violation of that order. FHWA is not proposing any additional penalty for failure to pay as ordered, except that any reduction in the Final Order of the original claim for violations found to be valid will be automatically waived, and the full amount of the claim restored. FHWA will also press for full interest on any unpaid balance. Notice of these consequences of nonpayment will appear in Final Orders. Any other relief ordered in a Final Order will be enforced by penalties specifically noted in the Final Order.

d. Out-of-Service Orders

Paragraph (5)(A) of section 521(b) provides, in part: If, upon inspection or investigation, the Secretary determines that a violation of section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986 or a regulation issued under such sections or Act, or combination of such violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard.

The FHWA has previously exercised authority to place vehicles (49 CFR 393.9) and drivers (49 CFR 392.5 and 396.13) out of service as a result of roadside inspections revealing critical safety violations. On such occasions, a sticker is placed on the vehicle, which is required to remain out of service until the vehicle defect is corrected or until the driver comes into compliance (or a qualified substitute is provided). In addition, a Driver-Vehicle Examination Report (from MCS–63) is prepared, served on the driver, and a copy mailed to the carrier. The carrier is required to complete and return to the FHWA a portion of the form certifying the corrective action taken. Rarely has a monetary penalty been assessed either for the out-of-service violation or for failure to take the corrective action and return the form. Notation is made in the carrier's file for reference at a future compliance review.

The regulations in parts 395 and 396 have now beeen reissued under the authority of the MCSA (52 FR 41,718, October 30, 1987 and 53 FR 49,402, December 7, 1988, respectively). Henceforth, orders will be issued at roadside inspections conducted by Federal inspectors placing the vehicle or the driver out of service, and directing the carrier to take corrective action which shall be required to be confirmed in writing to the FHWA. Filure to comply with such order of duly authorized agent of the FHWA would subject the carrier or driver to a penalty under this proposed rule. The FHWA believes that the imposition of a substantial penalty for failure to comply with an out-of-service order is warranted. In such cases, a determination has been made that the vehicle and driver cannot be allowed to continue to operate in their present condition on the highways because they pose an imminent hazard to public safety. Defiance of the order displays a disregard for such safety, and a substantial penalty will better assure compliance with the order. The requirement for written confirmation that corrective action has been taken is a reasonable means to assure compliance and creates a record that can be verified during a future comliance review. Failure to submit the required written confirmation, therefore, takes on greater significance, establishing a presumption that the correction may not have been made.

In addition to vehicle and driver out-of-service orders, the MCSA authorizes the FHWA, upon discovery of an imminent hazard during an investigation, to order an employer to cease all or part of its operations until the hazard is abated. Such orders are now provided for in 49 CFR § 386.72(b) under the authority of the MCSA. Failure to comply with such an order would subject an employer (carrier) to a penalty under this rule as proposed.

Other procedures in Part 386 are being revised to provide adequate and particular notice to carriers of the presence of imminent hazards and the opportuinty to correct the conditions causing the hazard. The device of a Notice of Investigation will be used in cases where noncompliance is persistent. The Notice of Investigation will include specific directions to comply with the regulations and actions necessary to be taken to avert both the imminent hazards noted by the FHWA and further violations of the regulations. The Notice of Investigation will also note specifically that failure to comply with the directions of the Notice may result in further penalties and an order to cease the operations in which the violations persist.

Out-of-service orders directed to carriers in an imminent hazard situation are issued to prevent death or serious injury that is likely to result if the vehicle, driver or carrier operations continue uncorrected. To ignore or violate such orders is considered in the same category as substantial health and safety violations, and the penalties proposed reflect the extreme seriousness of such blatant disregard for safety.

Penalty: For failure to comply with an out-of-service order regarding a driver, the penalty is proposed at $1,000 against the driver for returning to service before the time prescribed in the order, and $500 against the employer for failure to return written confirmation of the corrective action within the time prescribed in the order. If it can be shown that the employer directed the driver to continue notwithstanding the out-of-service order, the employer would be subject to a penalty of $10,000. If the driver is also the carrier, i.e. independent owner-operator, the penalty would be limited to $1,000.

With regard to an out-of-service vehicle, the penalty is proposed at $2,000 per day up to a maximum of $10,000 if the vehicle was operated without correction of the out-of-service defect, and $500 for failure to return written confirmation of the corrective action within the time prescribed in the order.

For purposes of this penalty provision, a false certification is considered the same as no certification. In addition, the person certifying falsely is subject to criminal prosecution under 18 U.S.C. 1001.

With respect to orders directing a carrier to cease all or part of its operations, the proposed penalty for failure to comply is $10,000 for each day or part of a day the operation is continued beyond the date of effective service of the order.

3. Penalty Amounts

Section 521(b)(2)(C) requires consideration of certain factors in fixing the amount of civil penalties for violations of the safety regulations. These factors include the nature, circumstances, extent, and gravity of the violation, degree of culpability, history of prior offenses, and ability to pay. It is the FHWA's position that these factors are considered primarily in the initial enforcement proceedings that brought about the orders. The levels of the discretionary penalties proposed in this rule are based on the continuation of violations after the issuance of specific remedial orders and are commensurate with the nature of the orders violated. It is the FHWA's intent to treat violations of its orders very seriously, and therefore the penalties are considered relatively fixed. All the penalties discussed herein and proposed in the rule are maximums, and the FHWA will retain discretion to meet special circumstances by setting penalties for violations of notices and orders, in some cases, at less than the maximum.

4. Review of Discretionary Penalties

The civil penalties for violations of notices and orders will be assessed in the same manner as civil penalties are presently assessed for violations of the safety regulations. A Claim Letter will be issued under part 386, which will initiate the procedures in that part. Persons charged with violations of orders will have the same opportunity to contest the claim as is currently provided in part 386, and hearings before administrative law judges will be afforded to resolve material factual issues in dispute. The penalties assessed and claims made in these cases will be for violations of notices and orders, sometimes issued after a claim based on violations of the safety regulations has been administratively adjudicated. Violation of a Final Order would be such a case. The issues in such cases will be limited to whether the violation of the Final Order occurred as claimed, and the appropriate penalty level for that violation. The original claim that brought about the Final Order will not be reopened for review.

5. Conforming Amendments

The proposed penalty schedule is being placed in a separate subpart in 49 CFR part 386, which is the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings. The penalties proposed in this rule relate to orders and notices emanating from these proceedings. Including a penalty section in this part allows for ready cross-reference between subparts. Other amendments to part 386 are being proposed to provide definitions and clarifications of terms which now take on additional significance because of the penalties associated therewith. Amendments are also included to make it clear that the authority to make such orders and notices may be delegated by the Associated Administrator for Motor Carriers at his or her discretion. There is no statutory prohibition to such delegation, and it is consistent with other delegations in the enforcement program.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The proposals contained in this document would not result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. A regulatory evaluation is not required because of the ministerial nature of this action.

Based on the discussion above and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 386

Administrative practice and procedure, Civil forfeiture, Motor carriers, Hazardous materials transportation, Highway safety, Motor vehicle safety, and Penalties.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, part 386 as set forth below.

Issued on: March 21, 1990.

T. D. Larson,

Administrator, Federal Highway Administration.

The FHWA proposes to amend 49 CFR chapter III, part 386, as follows:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

1. The authority citation for Part 386 continues to read as follows:

Authority: Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et seq.*); the Motor Carrier Safety Act of 1984, Pub. L. 98–554, 98 Stat. 2829 (49 U.S.C. 2501 *et seq.*); the recodification of Title 49, U.S. Code, Transportation, Pub. L. 97–449, 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); the Hazardous Materials Transportation Act,

Pub. L. 93–633, 88 Stat. 2156 (49 U.S.C. 1801 *et seq.*); the Bus Regulatory Reform Act of 1982, Pub. L. 97–261, 96 Stat. 1121 (49 U.S.C. 10927, note); the Motor Carrier Act of 1980, Pub. L. 96–296, 94 Stat. 820 (49 U.S.C. 10927, note); 49 CFR 1.45, 1.48.

2. Section 386.2 is amended by revising the definition of "Associate Administrator" and by adding in alphabetical order three new definitions, as follows:

§ 386.2 Definitions.

Abate or abatement means to discontinue regulatory violations and to refrain from actions identified in a notice as noncompliance.

* * * * *

Associate Administrator means the Associate Administrator for Motor Carriers of the Federal Highway Administration or his/her delegate.

* * * * *

Compliance order means a written direction, issued at the conclusion of a civil forfeiture proceeding initiated by Notice of Investigation, to a respondent requiring the performance of certain acts which, based upon the findings in the proceeding, are considered necessary to bring a respondent into compliance with the regulations found to have been violated.

Consent order means a compliance order which has been agreed to by a respondent in the settlement of a civil forfeiture proceeding.

* * * * *

3. Section 386.11 is amended by revising paragraphs (b) introductory text, (b)(2), (c) heading and introductory text, and (c)(3) and by adding paragraph (c)(4) to read as follows:

§ 386.11 Commencement of proceedings.

* * * * *

(b) *Civil forfeitures.* These proceedings are commenced by the issuance of a Claim Letter or a Notice of Investigation.

* * * * *

(2) In addition to the information required by paragraph (b)(1) of this section, the letter may contain such other matters as the FHWA deems appropriate, including a notice to abate.

* * * * *

(c) *Notice of Investigation.* This is a notice to a respondent that FHWA has discovered violations of the Federal Motor Carrier Safety Regulations or the Hazardous Materials Regulations under circumstances which may require a compliance order and monetary penalty. The proposed form of the compliance order will be included in the notice. The Associate Administrator or authorized delegate thereof may issue a Notice of Investigation at his or her own discretion or upon a complaint filed pursuant to § 386.12.

* * * * *

(3) A Claim Letter may be combined with a Notice of Investigation in a single proceeding. In such proceeding, the 30-day reply period in paragraph (c)(1) of this section shall apply.

(4) A notice to abate contained in a Claim Letter or Notice of Investigation shall specify what must be done by the respondent, a reasonable time within which abatement must be achieved, and that failure to abate subjects the respondent to additional penalties as prescribed in subpart G of this part.

4. Section 386.14 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(2), (b)(3), (c), and (e) to read as follows:

§ 386.14 Replies and requests for hearing: Civil forfeiture proceedings.

(a) *Time for reply.* The respondent must serve a reply within 15 days after a Claim Letter is received, or within 30 days after a Notice of Investigation is received.

(b) *Contents of reply.* The reply must contain the following:

(1) An admission or denial of each allegation of the claim or notice and a concise statement of facts constituting each defense;

(2) If the respondent contests the claim or notice, a request for an oral hearing or notice of intent to submit evidence without an oral hearing must be contained in the reply. A request for a hearing must list all material facts believed to be in dispute. Failure to request a hearing within 15 days after the Claim Letter is served, or 30 days in the case of a Notice of Investigation, shall constitute a waiver of any right to a hearing;

(3) A statement of whether the respondent, in lieu of a hearing, wishes to negotiate the terms of payment, settlement of the amount claimed, or the terms and conditions of the order; and

* * * * *

(c) *Submission of evidence.* If a notice of intent to submit evidence without oral hearing is filed, or if no oral hearing is requested, and the respondent contests the claim or the contents of the notice, all evidence must be served in written form no later than the 40th day following service of the Claim Letter or Notice of Investigation. Evidence must be served in the form specified in § 386.49.

* * * * *

(e) *Failure to reply or request a hearing.* If a respondent does not reply to a Claim Letter within the time prescribed in this section, the Claim Letter becomes the final agency order in the proceeding 25 days after it is served. When no reply to the Notice of Investigation is received within the time prescribed in this section, the Associate Administrator may, on motion of any party, issue a final order in the proceeding.

§ 386.15 [Removed and Reserved]

5. Section § 386.15 is removed and reserved.

§ 386.16 [Amended]

6. Section 386.16 is amended by revising paragraph (c)(1) introductory text, (c)(1)(v), and by adding paragraph (c)(1)(vi), and by removing the word "and" after the semicolon in paragraph (c)(1)(iv) to read as follows:

* * * * *

(c) *Settlement of civil forfeitures.* (1) When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an order, a settlement agreement shall be drawn and signed by the respondent and the Associate Administrator or authorized delegate thereof. Such settlement agreement must contain the following:

* * * * *

(v) A statement that the agreement is not binding on the agency until executed by the Associate Administrator or authorized delegate thereof; and

(vi) A statement that failure to pay in accordance with the terms of the agreement which has been adopted as a Final Order will result in the loss of any reductions in penalties for claims found to be valid, and the original amount claimed will be due immediately.

* * * * *

§§ 386.21 and 386.22 [Redesignated as §§ 386.22 and 386.23]

7. Subpart C of part 386 is amended by revising the subpart heading; by redesignating §§ 386.21 and 386.22 as §§ 386.22 and 386.23, respectively; by adding a new § 386.21; and by revising paragraphs (a) introductory text and (b) in newly designated § 386.23 as follows:

Subpart C—Compliance and Consent Orders

§ 386.21 Compliance order.

(a) When a respondent contests a Notice of Investigation or fails to reply to such notice, the final order disposing of the proceeding may contain a compliance order.

(b) A compliance order shall be executed by the Associate

Administrator and shall contain the following:

(1) A statement of jurisdictional facts;

(2) Findings of fact, or reference thereto in an accompanying decision, by a hearing officer or by the Associate Administrator upon respondent's failure to reply to the notice, which establish the violations charged;

(3) A specific direction to the respondent to comply with the regulations violated within time limits provided;

(4) Other measures to the respondent to take reasonable measures, in the time and manner specified, to assure future compliance;

(5) A statement of the consequences for failure to meet the terms of the order;

(6) A statement that the Notice of Investigation and the final decision of the hearing officer or Associate Administrator may be used to construe the terms of the order;

(7) A statement that failure to pay in accordance with the terms of the Final Order will result in the loss of any reductions in penalties for claims found to be valid, and the original amount claimed will be due immediately; and

(8) A statement that the order constitutes final agency action, subject to review as provided in 49 U.S.C. 521(b)(8) for violations of regulations issued under the authority of 49 U.S.C. 3102, the Motor Carrier Safety Act of 1984 or sections 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicles Safety Act of 1986; or as provided in 5 U.S.C. 701 *et seq.*, for violations of regulations issued under the authority of 49 U.S.C. 1804 (hazardous materials proceedings) or 49 U.S.C. 10927 note (financial responsibility proceedings).

(c) *Notice of imminent hazard.* A compliance order may also contain notice that further violations of the same regulations may constitute an imminent hazard subjecting respondent to an order under subpart F of this part.

§ 386.23 Content of consent order.

(a) Every agreement filed with the Associate Administrator under § 386.22 must contain:

* * * * *

(b) A consent order may also contain any of the provisions enumerated in § 386.21, Compliance order.

Subpart F—Injunction and Imminent Hazards

8. Section 386.72 is amended by adding a sentence at the end of paragraph (b)(2) and by adding paragraph (b)(3) to read as follows:

§ 386.72 Imminent hazard.

* * * * *

(b) * * *

(2) * * * An order to an employer to cease all or part of its operations shall not operate to prevent vehicles in transit at the time the order is served to proceed to their immediate destinations, unless any such vehicle or its driver is specifically ordered out of service forthwith. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.

(3) Failure to comply immediately with an order issued under this section shall subject the motor carrier employer or employee driver to penalties prescribed in subpart G of this part.

9. Part 386 is amended by adding a new subpart G, to read as follows:

Subpart G—Penalties

§ 386.81 General.
§ 386.82 Civil penalties for violations of notices and orders.

Subpart G—Penalties

§ 386.81 General.

The maximum amounts of civil penalties that can be imposed for regulatory violations subject to the civil forfeiture proceedings in this part are set forth in the statutes authorizing the regulations. The determination of the actual civil penalties assessed in each proceeding is based on those defined limits and consideration of information available at the time the claim is made concerning the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offense, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In adjudicating the claims and notices under the administrative procedures herein, additional information may be developed regarding those factors that may affect the final amount of the claim.

§ 386.82 Civil penalties for violations of notices and orders.

(a) Additional civil penalties and chargeable for violations of notices and orders which are issued under civil forfeiture proceedings pursuant to 49 U.S.C. 521(b). These notices and orders are as follows:

(1) Notice to abate—§ 386.11(b)(2) and (c)(1)(iv);

(2) Notice to post—§ 386.11(b)(3);

(3) Final order—§ 386.14(f); and

(4) Out-of-service order—§ 386.72(b)(3).

(b) A schedule of these additional penalties is provided in the Appendix to this part. All the penalties are maximums, and discretion will be retained to meet special circumstances by setting penalties for violations of notices and orders, in some cases, at less than the maximum.

(c) Claims for penalties provided in this section and in the Appendix shall be made through the civil forfeiture proceedings contained in this part. The issues to be decided in such proceedings will be limited to whether violations of notices or orders occurred as claimed and the appropriate penalty level for that violation. Nothing contained herein shall be construed to authorize the reopening of a matter already finally adjudicated under this part.

10. Part 386 is amended by adding an Appendix to read as follows:

Appendix to Part 386—Penalty Schedule; Violations of Notices and Orders

I. Notice to Abate

a. *Violation*—failure to comply with notice requiring abatement of recordkeeping violations in the time and manner prescribed.

Penalty—
$100 per day per violation for first 5 days
$200 per day per violation for next 5 days
$300 per day per violation for next 5 days
$400 per day per violation for next 5 days
$500 per day per violation thereafter.
Maximum—$7,500.

b. *Violation*—failure to comply with notice requiring abatement of patterns of safety violations in the time and manner prescribed.

Penalty—
$500 per day per violation for first 10 days
$1,000 per day thereafter.
Maximum—None.

c. *Violation*—failure to comply with notice requiring abatement of substantial health and safety violations in the time and manner prescribed.

Penalty—
$2,500 per day per violation for first 5 days
$5,000 per day per violation thereafter.
Maximum—None.

d. *Violation*—failure to comply with notice requiring abatement of violations of the commercial drivers license requirements of Part 383 in the time and manner prescribed.

Penalty—$1,000 per day per violation.
Maximum—None

II. Notice to Post

Violation—failure to post notice of violation (i.e., Notice of Investigation) as prescribed.

Penalty—$500 (A separate violation may be charged each time a failure to post as ordered is discovered.)

III. Final Order

Violation—failure to comply with final agency order, i.e. failure to pay the penalty assessed or to comply with other terms specified therein, after notice and opportunity

for hearing within time prescribed in the order.

Penalty—Automatic waiver of any reduction in the original amount of any claim found to be valid, and immediate restoration to the full amount assessed in the Notice of Claim.

IV. Out-of-Service Order

This section applies to Out-of-Service orders issued by duly authorized agents or employees of FHWA.

Violations—1. Operation of commercial vehicle by driver during period the driver was placed out-of-service.

Penalty—$1,000 per offense.

2. Requiring or permitting a driver to operate a commercial vehicle during period the driver was placed out-of-service.

Penalty—$10,000 per offense.

(For purposes of the penalty, an independent owner-operator who is also the driver will be considered only as a driver, limiting the penalty to $1,000.)

3. Operating a commercial motor vehicle placed out-of-service or requiring or permitting to be operated before the required repairs are made.

Penalty—$2,000 per day the vehicle is so operated.

Maximum—$10,000.

4. Failure to return written confirmation of correction as required by the out-of-service order or returning a false confirmation.

Penalty—$500.

(Note: Falsification of confirmation may also result in prosecution under 18 U.S.C. § 1001).

5. Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations, i.e., failure to cease operations as ordered.

Penalty—$10,000 per day the operation continues after the effective date and time of the order to cease.

[FR Doc. 90–6816 Filed 3–26–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for Dalea Foliosa (Leafy Prairie-clover)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Dalea foliosa* (leafy prairie-clover) as an endangered species under the Endangered Species Act of 1973 (Act), as amended. This rare plant is presently known from only one site in Alabama, seven sites in Tennessee, and four sites in Illinois. It is threatened throughout its range by habitat alteration; residential, commercial, or industrial development; livestock grazing; and conversion of its limited habitat to pasture. This proposal, if made final, would extend the protection of the Act to *Dalea foliosa*. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by May 29, 1990. Public hearing requests must be received by May 11, 1990.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. 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. Robert R. Currie at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Dalea foliosa (Gray) Barneby, a perennial, is a member of the pea family (Fabacae) that has only been collected from Illinois, Tennessee, and Alabama. The erect 0.5-meter (1.5-foot) tall stems arise from a hardened root crown. The plant's pennately compound alternate leaves are 3.5 to 4.5 centimeters (1.4 to 1.8 inches) long and are composed of 20 to 30 leaflets. The small purple flowers are borne in dense spikes at the end of the stems (Smith and Wofford 1980). Flowering begins in late July and continues through August. Seeds ripen by early October, and the above-ground portion of the plant dies soon afterward. The dead stems remain erect and disperse ripened seeds from late fall to early spring (Baskin and Baskin 1973).

Dalea foliosa was described by Gray in 1868 as *Petalostemum foliosum* (Gray 1868). Barneby (1977) included the species of the genus *Petalostemon* (alternative spelling) within his concept of the genus *Dalea*, and his treatment of the group is followed by the Service.

Dalea foliosa is typically found growing in close association with the cedar glades of central Tennessee and northern Alabama. However, it seems to prefer the deeper soil of the prairie-like areas along the boundaries of, and within, the rocky cedar glades (Smith and Wofford 1980). In Illinois the species is now found only along the Des Plaines River, growing in prairie remnants that occur on thin-soil areas overlying limestone (Kurz and Bowles 1981). A description of the species' status within each State where it occurs is provided below.

Alabama.

The two known locations for *Dalea foliosa* in Alabama were discovered in the late 1960s (Baskin and Caudle 1967). At the time of their discovery, one population (Franklin County) was small and contained only a few plants. The other population (Morgan County) was relatively larger and contained several hundred individuals. Smith and Wofford (1980) reported that no plants were found at the Franklin County site during the 1980 field season. They further reported that while the Morgan County population only supported about 50 individuals, it appeared to be a healthy, reproducing population.

Illinois

Dalea foliosa was originally known from six counties in the northeastern portion of the State (Kurz and Bowles 1981). Only four known populations are now left in the State. All are in Will County and are growing in prairie remnants along the Des Plaines River. Historically the species was also found in Boone, Ogle, Kane, La Salle, and Kankakee Counties. The Illinois Department of Conservation recently attempted to reestablish the species at one of the historic Kankakee County sites. In the spring of 1988, 105 individuals were planted in suitable habitat at this historic location. The spring and summer of 1988 were very dry in northern Illinois, and only six individuals survived to the fall of 1988 (John Schwegman, Illinois Department of Conservation, personal communication, 1989). it is not known whether a viable, reproducing population will become reestablished at this site.

Two of the known Illinois sites are protected and managed by the Will County Forest Preserve District. A third site, recently rediscovered by the Illinois Natural History Survey, is adjacent to the right-of-way for a proposed new highway. A portion of the fourth location was recently destroyed. The Will County Forest Preserve District will attempt to acquire this area and will restore the *Dalea foliosa* population located there, provided suitable habitat still exists at the site (De Mauro *in litt.*).

Tennessee

The following information on *Dalea foliosa* in Tennessee was primarily derived from Smith and Wofford (1980) and Dr. Paul Somers (Tennessee Department of Conservation, personal communication, 1989).

Only 7 populations of *Dalea foliosa* are known to survive in Tennessee, and most of these populations are small, containing fewer than 30 individual plants. Historically, the plant was known from five Rutherford County sites. One of these sites was destroyed by industrial construction, and the species has not been observed on three other Rutherford County sites in the recent past. In Rutherford County the only known currently occupied site is in a State park, and it contains 25 to 30 individuals. Wilson County supports one small privately owned population containing 12 plants. Marshall County had one known *Dalea foliosa* site, but the species has not been observed in the recent past and is likely extirpated from the county. Davidson County once supported four populations. One of the sites has been bulldozed for development and is considered to be lost to the species. Another site is slated for development and is expected to be lost, and two very small populations, discovered in 1985, have not been observed since their discovery. Williamson County supports one population of the species, and most of this site has been acquired through donation by The Nature Conservancy and is protected. However, a small portion remains in private ownership and could be lost. The largest and healthiest Tennessee population is owned by the Tennessee Valley Authority and is located in Maury County. This site is within the floodpool of the proposed Columbia Dam project and will be flooded if the project is constructed as originally proposed (See the "Summary of Factors Affecting the Species" section of this proposed rule for further discussion of this project). The Tennessee Department of Conservation conducted a survey of over 200 cedar glades and cedar glade remnants in the central basin of Tennessee during 1987 and 1988. Despite this thorough search of most of the available habitat for *Dalea foliosa*, no new populations of the species were found.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), 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 (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Dalea foliosa* (*Petalostemum foliosum*) was included in the Smithsonian report and the July 1, 1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Dalea foliosa* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Dalea foliosa* was included as a category 1 species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Category 1 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened is appropriate. This species was changed to a category 2 species when the notice of review for native plants was revised in 1983 (48 FR 53640) and again in 1985 (50 FR 39526).

Category 2 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. This was the case with *Dalea foliosa*. The Service believed that additional searches of potential habitat in central Tennessee were needed before a decision could be made whether to prepare a proposed rule to add the species to the list or not. The Service funded a survey in 1979 to determine the status of *Dalea foliosa* in Alabama and Tennessee; a final report on this survey was accepted by the Service in 1980. A report summarizing the status of the species in Illinois was completed by Kurtz and Bowles in 1981. During the 1987 and 1988 field seasons, personnel with the Tennessee Department of Conservation conducted an extensive inventory of cedar glades in central Tennessee. Over 200 sites were visited during this inventory, and no additional populations of *Dalea foliosa* were discovered.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on 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 *Dalea foliosa* because of the acceptance of the 1975 Smithsonian report as a petition. In 1983, 1984, 1985, 1986, 1987, 1988, and 1989, the Service found that the petitioned listing of *Dalea foliosa* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final 1-year finding.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act 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 *Dalea foliosa* (Gray) Barneby (leafy prairie-clover) (=*Petalostemum foliosum* Gray) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All but 3 of the 12 known populations of *Dalea foliosa* are threatened with destruction or adverse modification of their habitat. The plant is best protected in Illinois, where two of the four sites are being managed to protect the species. One of the Illinois sites could be adversely affected by construction of a proposed highway. However, with proper planning and appropriate care during actual construction, it should be possible to protect this population. The fourth Illinois population has been partially destroyed, and it is not known if the site can be protected and the *Dalea foliosa* population restored to its original condition (De Mauro *in litt.*, Kurz and Bowles 1981).

The Franklin County, Alabama, population was apparently destroyed by a series of construction activities that included road-widening, associated construction and, later, installation of an underground pipeline (Cary Norquist, Service, personal communication, 1989). The small Morgan County, Alabama, population is vulnerable to loss or alteration by residential construction or conversion to livestock pasture (Smith and Wofford 1980).

Two of Tennessee's seven currently confirmed populations are partially protected. Most of the only Williamson

County population has been acquired by The Nature Conservancy through donation and is thereby protected from destruction or alteration of its habitat. The portion of this population that is privately owned and unprotected remains vulnerable to loss in the future.

The best and largest Tennessee population is located on land owned by the Tennessee Valley Authority (TVA) in Maury County. This site was acquired as a part of the Columbia Dam project area.

Completion of this project has been delayed while TVA has been pursuing a mussel conservation plan aimed at avoiding jeopardy to federally listed endangered mussels that inhabit the project impact area. Several alternatives to the original project are currently being evaluated by the Tennessee Valley Authority (Tennessee Valley Authority 1988). These alternatives could involve lower floodpool levels than originally proposed. Should they be chosen, the altered project would have no impact on the *Dalea foliosa* population. If the full-pool alternative is implemented, the Maury County population will be inundated.

Davidson County has four recorded occurrences for *Dalea foliosa*. One of these has recently been bulldozed in preparation for development of the site. The Tennessee Department of Conservation and the Center for Plant Conservation are attempting to put the few plants remaining at this location into cultivation in order to ensure that the genetic material they contain is not lost. Two sites discovered in 1985 are very small and have not been observed to support any plants since the original discovery.

An early report that the species occurred in Knox county was apparently based upon the collection of a specimen from a transplanted population. The species was not native to Knox County, and the transplanted population has died out.

All of the known *Dalea foliosa* locations are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants, such as cedar, that produce shade and compete for limited water and nutrients. Active management is required to ensure that the species continues to survive at all sites. In Illinois, experiments on the use of fire to maintain the available habitat in a condition conducive to *Dalea foliosa* are being evaluated. The species does not survive intensive livestock grazing (Kral 1983), and this factor remains a threat to all but the three protected and the two urban populations. Direct destruction of habitat for commercial, residential, or industrial development and intensive right-of-way maintenance activities are the most significant threats to the species at this time (Smith and Wofford 1980).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is little or no commercial trade in *Dalea foliosa* at this time. Most populations are very small and cannot support collection of plants for scientific or other purposes. Inappropriate collecting for scientific purposes or as a novelty is a potential threat to the species.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Dalea foliosa* is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act. This protects the species from taking without the permission of the landowner or land manager. In Illinois, the species is listed as endangered by the Illinois Department of Conservation's Order 154. Although this is an official listing, it does not provide any legal protection. In Alabama, the species does not receive any protection by the State.

Should the species be added to the Federal list of endangered and threatened species, additional protection from taking will be provided to the one population on Federal land and to the other populations when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate commercial trade would also be provided.

E. *Other natural or manmade factors affecting its continued existence.* The only other additional factors that threaten *Dalea foliosa* are the extended drought conditions that the species has faced during the past few years. The extremely dry summer of 1988 is probably responsible for the low survival rate of plants reintroduced to one of the Kankakee County, Illinois, locations. Only 6 of 105 plants transplanted to the site survived to the end of the summer. These conditions can be expected to be causing higher than normal mortality of seedlings in the natural populations and could, if they continue over an extended period of time, have an adverse effect on the survival of *Dalea foliosa*.

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 *Dalea foliosa* as an endangered species. With only 12 relatively small populations, and 9 of these threatened with destruction or adverse modification of the habitat, and all populations in need of long-term management, a classification of endangered is commensurate with the definition of "endangered species" found in section 3(6) of the Act. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. Most populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Taking, without permits, is prohibited by the Act from locations under Federal jurisdiction; however, only one of the known populations is under Federal jurisdiction. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Dalea foliosa* have been made aware of the plant's location and of the importance of protecting the plant and its habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Dalea foliosa*.

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. 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 the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, 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 or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All but one of the known populations of *Dalea foliosa* are on privately owned or State-owned land. One Tennessee population is on land owned by the Tennessee Valley Authority. The population is within the impoundment area of a proposed dam project. For further information on this project and its effects on *Dalea foliosa*, see the "Background" and "Summary of Factors Affecting the Species" sections of this proposed rule. One of the Illinois populations is near the right-of-way of a federally funded highway. The Illinois Department of Conservation and the Will County Forest Preserve District are working with the Illinois Department of Transportation to ensure that construction of the highway does not result in the loss or significant alteration of this population.

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 plants. 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, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or resolution, including State criminal trespass law. Certain exceptions 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 because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as affective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning 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 *Dalea foliosa*;

(2) The location of any additional populations of *Dalea foliosa* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Dalea foliosa*.

Final promulgation of the regulation on *Dalea foliosa* 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 this proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

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

References Cited

Barneby Rupert C. 1977. Daleae Imagines, An Illustrated Revision of *Errazurizia* Phillippi, *Psorothamnus* Rydberg, *Marina* Liebmann, and *Dalea* Lucanus emend. Barneby, including all species of Leguminosae tribe Amorpheae Borissova ever referred to Dalea—*Dalea foliosa*, Mem. New York Bot. Garden 27:244–245, 702–703.

Baskin, J.M., and C. Caudle. 1967. *Petalostemon filiosus* in Alabama. Rhodora 69:383–384.

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Kral, Robert. 1983. A Report on Some Rare, Threatened, or Endangered Forest-related Vascular Plants of the South. USDA, Forest Service Tech. Pub. R8–TP2 Vol. 1. 718 pp.

Kurz, D.R., and M.L. Bowles. 1981. Report on the Status of Illinois Vascular Plants Potentially Endangered or Threatened in the United States. Unpublished report, Natural Land Institute, Rockford, Illinois. 7 pp.

Smith, D.K. and B.E. Wofford. 1980. Status Report—*Petalostemum foliosum* Gray (*Dalea foliosa* (Gray) Barneby). Unpublished report for the USDI, Fish and Wildlife Service, Southeast Region, Atlanta, Georgia. 31 pp.

Tennessee Valley Authority. 1988. Biological Assessment of Columbia Dam Alternatives, Duck River, Tennessee. Unpublished report, Knoxville, Tennessee. 28 pp., plus 3 appendices.

Author

The primary author of this proposed rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Fabaceae 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					
Fabaceae—Pea family:						
*	*	*	*	*	*	*
Dalea foliosa (=*Petalostemum foliosum*)	Leafy prairie-clover	U.S.A. (AL, IL, TN)	E		NA	NA
*	*	*	*	*	*	*

Dated: February 28, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–6814 Filed 3–26–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 59
Tuesday, March 27, 1990

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.

ADVISORY COMMITTEE ON FEDERAL PAY

Meetings

The Advisory Committee on Federal Pay announces that public discussions of the adjustment in Federal white-collar employee pay for Fiscal Year 1991 have been scheduled for Tuesday, April 24, in Suite 600, 1730 K Street, NW., Washington, DC. They will start at 1:30 p.m.

These discussions are intended to give organizations representing Federal employees or any interested government employees an opportunity to express their views on the proposed 3.5 percent pay increase scheduled for January 1991, proposed pay reform legislation based on local labor market rates, recruitment and retention problems, reduced qualifications for personnel, and any other issues. Those wishing to discuss these issues with the Committes should notify the Committee by April 20. The telephone number is 653–6193. Written comments should also reach the Committee by April 20—Suite 205, 1730 K Street, NW., Washington, DC 20006. Both written submissions and requests for an opportunity to discuss the issues should include a telephone number where the organization or official can be reached.

Additionally, the Advisory Committee will be meeting in three cities outside Washington, DC.

The hearings will cover the same topics and have been scheduled as follows:

May 1, 1:00 to 4 p.m., in Boston Massachusetts, in the Thomas O'Neill Federal Office Building, Auditorium, 10 Causeway Street, Boston, Massachusetts 02222. Those wishing to present a brief 10-minute statement should contact Lt. E.J. Janse, Executive Director, Federal Executive Board (617) 223–8480.

May 15, 1:30 to 4 p.m., in San Antonio, Texas, Office of Personnel Management, Hearing Room, Suite 306, 8610 Broadway, San Antonio, Texas 78217. Those wishing to present a brief 10-minute statement should contact Lu Tanner in Washington, DC (202) 653–6193. A local contact in San Antonion is Ruben Molina (512) 229–6613.

May 22, 1 to 4 p.m., in St. Louis, Missouri, Old Federal Post Office and Court House Building, Room 302, 815 Olive Boulevard, St. Louis, Missouri 63101. Those wishing to present a brief 10-minute statement should contact Jack L. Collis, Executive Director, Federal Executive Board (314) 539–6312.

The Advisory Committee on Federal Pay, established as an independent agency by section 5306 of Title 5, United States Code (Pub. L. 91–656, the Federal Pay Comparability Act), is charged with assisting the President in carrying out the policies of section 5301 of Title 5, United States Code. The Committee's fundamental obligation is to present the President with an independent recommendation on Federal pay for the 1.4 million white-collar workers and other employees whose pay is linked to the General Schedule. Section 5306 of Title 5 requires the Committee to make findings and recommendations to the President on the annual adjustment in Federal pay after considering the written views of employee organizations, the President's Agent, other officials of the Government of the United States, and such experts as the Committee may consult.

Lucretia Dewey Tanner,
Executive Director.

[FR Doc. 90–6929 Filed 3–6–90; 8:45 am]
BILLING CODE 6820–43–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee Meeting; Postponement and Rescheduling

In the **Federal Register** of Thursday, February 22, 1990, (55 FR 6297), the U.S. Department of Agriculture (USDA), Science and Education, announced a meeting of the Agricultural Biotechnology Research Advisory Committee (ABRAC) for March 22–23, 1990. This notice announces postponement of the ABRAC meeting and rescheduling to the dates specified below.

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), USDA, Science and Education, announces the following advisory committee meeting:

Name: Agricultural Biotechnology Research Advisory Committee

Date: April 23–24, 1990.

Time: 9 a.m. to approximately 5 p.m. on April 23; 9 a.m. to approximately 3 p.m. on April 24

Place: The Clark Room, Capitol Holiday Inn, 550 C Street SW., Washington, DC., 20024.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major item to be considered at this meeting is the development of guidelines for biotechnology research in agriculture.

Contact Person: Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC., 20250. Telephone (202) 447–9165.

Done at Washington, DC., this 14th day of March 1990.

Charles E. Hess,
Assistant Secretary, Science and Education.

[FR Doc. 90–6897 Filed 3–26–90; 8:45 am]
BILLING CODE 3410–22–M

Forest Service

Record of Decision Concerning Seven Peaks Resort; Uinta National Forest; Utah and Wasatch Counties, Utah

The Decision

It is my decision to adopt Alternative 3 of the Final Environmental Impact

Statement (FEIS) for the Seven Peaks Resort, dated March 1, 1990, which proposed development of a year-round resort in Provo Peak Basin within the Uinta National Forest. My decision is based on the analysis documented in the FEIS, and dependent upon compliance with Federal and State laws and local ordinances that apply to this proposal.

Skiing use in the State of Utah has been increasing each year (R–4 Summary, "Skier Visit Data by Season" 1967–1988). The public has expressed strong support for the development or recreation facilities and use opportunities for a wide variety of recreation activites (Forest Plan). Many area recreation resorts are heavily used, resulting in requests for expansion of special-use permits and more facility development.

In many instances, access to the existing developments is the limiting factor in increasing use capacity. The growing population of Utah Valley is resulting in the need for more recreation opportunities. The Selected Alternative will provide facilities closer to populated areas at the southern end of the Wasatch Front and expand recreation use. A development, as proposed, will add to the attraction of Utah as a destination area for winter sports and enhance the year-round resort appeal of the northern Utah area as well, with minimal comparative access problems.

Alternative 3 proposes a permit boundary that encompasses approximately 3,010 acres, with access via a funicular on a 6,100-foot long track up the face of Maple Mountain. Capacity for the first portion of the development is 5,396 skiers at one time. Maximum capacity within the permit area could be as much as 8,000 skiers at one time.

The Selected Alternative includes a 200-unit Inn on Maple Flat, as many as 7 ski lifts, a pulse tram, and 3 warming lodges. It would provide a wide variety of recreation opportunities for a varied recreation user public, while preserving many of the existing use opportunities. It responds to user demands, public issues, and managment concerns, while giving consideration to critical environmental values.

Environmental impacts from construction, operation, and maintenance can be kept within acceptable levels established by laws and regulations, with implementation of mitigation measures and management practices outlined in Chapter IV of the FEIS.

Of the Alternatives considered, I find the Selected Alternative provides for the highest standard of resource management. It responds to user demands, public issues and management concerns, is the most economically efficient of the options considered, and is in compliance with standards and guidelines and management direction established in the *Uinta National Forest Land and Resource Management Plan*, approved by the Regional Forester on October 3, 1984.

I have determined that implementation of the Selected Alternative will not cause unreasonable risk of significant irreparable damage to watershed resource conditions, wildlife populations, or other resource values. Potential risks can be mitigated by regulating the amount and timing of vegetative cover disturbances and implementing the prescribed restoration activities (FEIS, pages IV–21–23, IV–32–33, and IV–36). Impacts to the 17.5 acres of riparian and wetlands identified within the project boundary can be mitigated by implementation of the prescribed mitigating measures (FEIS, page IV–42).

One threatened and endangered species, the Peregrine falcon, is present near the proposed development, but through mitigation requirements, falcon habitat will not be affected (FEIS, page IV–58).

Scenic values offered by undeveloped mountain landscapes cannot be completely mitigated. This can be offset by the positive recreation values offered by the proposal (FEIS, pages IV–43–48). All practicable means to avoid or minimize environmental harm from implementation of the proposed action have been adopted and are embodied in the mitigating measures of the FEIS and the Forest Plan.

Changes to vegetative cover created by the Selected Alternative will reduce the visual quality of the area. Feathering edges of openings in the vegetative cover, revegetating disturbed areas, and sensitive location of man-made features will minimize the impact. A monitoring and enforcement program as required by the Forest Plan and the FEIA shall be adopted for all implementation and management activitives.

Decision Rationale

The rationale used in identifying the Forest Service's Selected Alternative is based on information gathered during the scoping, analysis, and public review process (appendix M and chapters I, II, III, IV, and VI of the FEIS). Factors considered in making the Alternative selection were: (1) Effect on renewable and nonrenewabnle resources (chapter IV and appendix F), (2) physical and biological changes that would result from implementation (chapter IV appendix G), (3) social and economic effects of the proposed development (chapter I), (4) public benefits vs. environmental costs (chapter III), and (5) how the Alternatives respond to the identified issues, concerns, and opportunities (ICO's) (chapter IV).

Ski area development is a legitimate use of National Forest System lands. Construction, operation, and maintenance of the resort facility in the Provo Peak Basin area would be totally within public control. There would be no private lands involved in the proposed development. Most private lands encroached by facility development would be acquired by the proponents and transferred to the Forest Service in fee. Other activities that do not detract from resort facility development will continue within the permit boundary.

The analysis documented in the DEIS and FEIS indicates development under all the alternatives would be within the carrying capacity of the resources involved. Issues to provide additional recreation use opportunities, maintain visual quality, protect critical wildlife habitat, maintain soil/air/water resource values, and ensure an economic use of National Forest System lands were determined to be most significant. These issues, with the exception of visual quality, can be successfully resolved within the proposed permit boundary by implementing the prescribed mitigating measures outlined in the Forest Plan and Chapter IV of the FEIS.

Issues concerning the capability of the area resources to support the proposed development, identified during the review of the Draft Environmental Impact Statement, were addressed in the mitigating measures and development standards detailed in Chapter IV of the FEIS.

Issues concerning the capability of the area resources to support the proposed development, identified during the review of the Draft Environmental Impact Statement, were addressed in the mitigating measures and development standards detailed in Chapter IV of the FEIS.

Alternatives Considered

Alternatives considered in detail included:

Alternative No. 1, "No Action" (Environmentally Preferable) [FEIS, Chapter II, pages II–3 through II–6]—Alternative 1 was not selected because it did not meet the growing demands of the recreation public or the goals of the National Recreation Initiative to provide

a wide range of recreation opportunities to the American public.

Alternative No. 2, Existing Management (FEIS, Chapter II, pages II–6 through 13)—Alternative 2 was not selected for reasons similar to those for Alternative No. 1. In addition, it leaves the question of resort development in the Provo Peak Basin area unresolved. Environmental Impacts under Alternative 2 would be greater than under Alternatives 3 and 4, because of the potential scale of resort development permitted by the Forest Plan.

Alternative No. 3, Proponent's Proposal (FEIS, Chapter II, pages II–14 through II–29)—Alternative 3 was selected because it is in keeping with national recreation use goals for public lands. Alternative 3 is responsive to the issues, concerns, and opportunities identified in the Forest Plan and during the scoping process. It would also resolve the question of future ski area expansion in the Provo Peak Basin area.

Alternative No. 3 is superior to Alternative No. 4, because ski slope capacity and range of skier terrain available within this proposal enhance attraction to the Resort and better support the planned Inn facilities and year-round convention center concept. This Alternative would support a higher potential economic return. It would extend the ski season because of the increased range in elevation. Ski lifts required to access the high elevation lands encompassed in this alternative represent a relatively small environmental risk, since their location would be dictated by site conditions. Intensive environmental quality control would be exercised as each portion of the project is permitted and implemented. Impacts from support facilities, i.e. lodging, funicular access, etc., are the same as with Alternative 4.

Alternative No. 4, Proponent's Proposal Modified to Exclude Development on Provo Peak and in East and West Burn Hollow (FEIS, Chapter II, pages II–29 thru II–33)—Alternative 4 was not selected because it lacks the additional intermediate and expert skiing opportunities and has a narrower range of year-round recreation attractions than the Selected Alternative. Alternative 4 provides fewer recreation opportunities than the Selected Alternative, while requiring essentially the same fixed costs.

Regulations, and Special Conditions

Before issuance of a special-use permit, we require that the following special conditions be satisfied within 3 months of this date:

1. Air quality objectives and operational plans for the project must be approved by Federal, State, and local authorities.

2. Assurance must be obtained from the City of Provo and Seven Peaks Resort, Inc., that an enlarged debris basin at the mouth of Rock Canyon will be completed prior to any construction activity within that drainage.

3. Assurance of financial ability to complete the project must be provided to the satisfaction of the Forest Service.

This decision may be implemented 30 days from the date of the signing of this Record of Decision if the above conditions have been met.

In accordance with Secretary of Agriculture Appeal Regulations 36 CFR 217, this decision can be appealed. If you disagree with this decision, you may file a written notice of appeal with J. S. Tixier, Regional Forester, Federal Building, 324 25th Street, Ogden, Utah 84403, within 45 days of the date of this decision, with a copy to Don T. Nebeker, Forest Supervisor, 88 West, 100 North, P.O. Box 1428, Provo, Utah, 84601. The notice of appeal must also include information described in 36 CFR 217.9.

Information

For further information contact Larry B. Call, Land Management Planning Staff, at the address below or telephone (801) 377–5780.

Dated: March 15, 1990.

Don T. Nebeker,

Forest Supervisor, 88 West, 100 North, P.O. Box 1428, Provo, Utah 84601.

[FR Doc. 90–7037 Filed 3–26–90; 8:45 am]

BILLING CODE 3410–11–M

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Southwest Region, California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Southwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 217. This action is necessary to implement the Secretary of Agriculture's interim rule amending the Forest Service administrative appeal procedures, which was signed on February 26, 1990 and was published in the Federal Register on March 6, 1990. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notice in the listed newspapers will begin with decisions subject to appeal that are made on or after April 5, 1990. The list of newspapers will remain in effect until October 1990 when another notice will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: KJ Silverman, Regional Appeals Coordinator, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111, phone: (415) 705–2553.

SUPPLEMENTARY INFORMATION: On February 26, 1990, the Secretary of Agriculture signed an interim rule amending the administrative appeal procedures 36 CFR 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some forest supervisors and district rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Pacific Southwest Regional Forester decisions:
Sacramento Bee, Sacramento, California

Newspapers providing additional notice of Regonal Forester decisions:
Los Angeles Times, Los Angeles, California
San Francisco Chronicle, San Francisco, California

Angeles National Forest

Angeles Forest Supervisor decisions:
Los Angeles Times, Los Angeles, California

Arroyo-Seco District Ranger decisions:
Los Angeles Times, Los Angeles, California
Mount Baldy District Ranger decisions:
Los Angeles Times, Los Angeles, California
Saugus District Ranger decisions:
Los Angeles Times, Los Angeles, California
Tujunga District Ranger decisions:
Los Angeles Times, Los Angeles, California
Valyermo District Ranger decisions:
Los Angeles Times, Los Angeles, California

Cleveland National Forest

Cleveland Forest Supervisor decisions:
San Diego Union, San Diego, California
Descanso District Ranger decisions:
San Diego Union, San Diego, California
Palomar District Ranger decisions:
San Diego Union, San Diego, California
Riverside Press-Enterprise, Riverside, California
Trabuco District Ranger decisions:
Orange County Register, Santa Ana California
Riverside Press-Enterprise, Riverside, California

Eldorado National Forest

Eldorado Forest Supervisor decisions:
Mountain Democrat, Placerville, California
Amador District Ranger decisions:
Mountain Democrat, Placerville, California
Georgetown District Ranger decisions:
Mountain Democrat, Placerville, California
Pacific District Ranger decisions:
Mountain Democrat, Placerville, California
Placerville District Ranger decisions:
Mountain Democrat, Placerville, California

Inyo National Forest

Inyo Forest Supervisor decisions:
Inyo Register, Bishop, California
Mammoth District Ranger decisions:
Inyo Register, Bishop, California
Mono Lake District Ranger decisions:
Inyo Register, Bishop, California
Mount Whitney District Ranger decisions:
Inyo Register, Bishop, California
White Mountain District Ranger decisions:
Inyo Register, Bishop, California

Klamath National Forest

Klamath Forest Supervisor decisions:
Siskiyou Daily News, Yreka, California
Happy Camp District Ranger decisions:
Siskiyou Daily News, Yreka, California
Goosenest District Ranger decisions:
Herald News, Klamath Falls, Klamath County, Oregon
Butte Valley Star, Dorris, California
Oak Knoll District Ranger decisions:
Siskiyou Daily News, Yreka, California
Salmon River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Pioneer Press, Ft. Jones, California
Scott River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Pioneer Press, Ft. Jones, California
Ukonom District Ranger decisions:
Siskiyou Daily News, Yreka, California
Pioneer Press, Ft. Jones, California
Kourier, Willow Creek, Humboldt County, California

Lake Tahoe Basin

Lake Tahoe Basin Forest Supervisor decisions:
Tahoe Daily Tribune, So. Lake Tahoe, El Dorado County, California
Newspapers providing additional notice for Lake Tahoe Basin Forest Supervisor decisions:
Tahoe World, Tahoe City, Placer County, California
Tahoe Bonanza, Incline Village, Washoe County, Nevada

Lassen National Forest

Lassen Forest Supervisor decisions:
Lassen County Times, Susanville, California
Almanor District Ranger decisions:
Chester Progessive, Plumas County, California
Hat Creek District Ranger decisions:
Intermountain News, Burney, Shasta County, California
Mountain Echo, Fall River Mills, Shasta County, California

Los Padres National Forest

Los Padres Forest Supervisor decisions:
Santa Barbara News Press, Santa Barbara, California
Ojai District Ranger decisions:
Star Free Press, Ventura, California
Monterey District Ranger decisions:
Salinas Californian, Monterey, California
Mount Pinos District Ranger decisions:
The Bakerfield Californian, Kern, California
Santa Barbara District Ranger decisions:
Santa Barbara News Press, Santa Barbara, California
Santa Lucia District Ranger decisions:
Telegram Tribune, San Luis Obispo, California

Mendocino National Forest

Mendocino Forest Supervisor decisions:
Chico Enterprise-Record, Chico, California
Corning District Ranger decisions:
Chico Enterprise-Record, Chico, California
Covelo District Ranger decisions:
Chico Enterprise-Record, Chico, California
Stonyford District Ranger decisions:
Chico Enterprise-Record, Chico, California
Upper Lake District Ranger decisions:
Chico Enterprise-Record, Chico, California

Modoc National Forest

Modoc Forest Supervisor decisions:
Modoc County Record, Alturas, Modoc County, California
Big Valley District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Devil's Garden District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Doublehead District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Herald News, Klamath Falls, Oregon
Warner Mountain District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California

Plumas National Forest

Plumas Forest Supervisor decisions:
Feather River Bulletin, Quincy, California
Beckworth, District Ranger decisions:
Feather River Bulletin, Quincy, California
Greenville District Ranger decisions:
Feather River Bulletin, Quincy, California
La Port District Ranger decisions:
Oroville Mercury Register, Oroville, California
Milford District Ranger decisions:
Feather River Bulletin, Quincy, California
Oroville District Ranger decisions:
Oroville Mercury Register, Oroville, California
Quincy District Ranger decisions:
Feather River Bulletin, Quincy, California

San Bernardino National Forest

San Bernardino Forest Supervisor decisions:
San Bernardino Sun, San Bernardino, California
Arrowhead District Ranger decisions:
Mountain News, Blue Jay, California
Big Bear District Ranger decisions:

Big Bear Life and Grizzly, Big Bear, California
Cajon District Ranger decisions:
San Bernardino Sun, San Bernardino, California
San Gorgonio District Ranger decisions:
Yucaipa News Mirror, Yucaipa, California
San Jacino District Ranger decisions:
Idyllwild Town Crier, Idyllwild, California

Sequoia National Forest

Sequoia Forest Supervisor decisions:
Porterville Recorder, Porterville, California
Cannel Meadow District Ranger decisions:
Porterville Recorder, Porterville, California
Greenhorn District Ranger decisions:
Porterville Recorder, Porterville, California
Hot Springs District Ranger decisions:
Porterville Recorder, Porterville, California
Hume Lake District Ranger decisions:
Porterville Recorder, Porterville, California
Tule River District Ranger decisions:
Porterville Recorder, Porterville, California

Shasta-Trinity National Forest

Shasta-Trinity National Forest decisions:
Record Searchlight, Redding, Shasta County, California
Big Bar District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Hayfork District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
McCloud District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Mount Shasta District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Shasta Lake District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Weaverville District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Yolla Bolla District Ranger decisions:
Record Searchlight, Redding, Shasta County, California

Sierra National Forest

Sierra Forest Supervisor decisions:
Fresno Bee, Fresno, California
Kings River District Ranger decisions:
Fresno Bee, Fresno, California
Pineridge District Ranger decisions:
Fresno Bee, Fresno, California
Mariposa District Ranger decisions:
Fresno Bee, Fresno, California
Minarets District Ranger decisions:
Fresno Bee, Fresno, California

Six Rivers National Forest

Six Rivers Forest Supervisor decisions:
Times Standard, Eureka, California
Gasquet District Ranger decisions:
Del Norte Triplicate, Crescent City, California
Lower Trinity District Ranger decisions:
Klamath Kourier, Hoopa, California
Mad River District Ranger decisions:
Times Standard, Eureka, California
Orleans District Ranger decisions:
Klamath Kourier, Hoopa, California

Stanislaus National Forest

Stanislaus Forest Supervisor decisions:
The Union Democrat, Sonora, California
Calaveras District Ranger decisions:
The Union Democrat, Sonora, California
Groverland District Ranger decisions:
The Union Democrat, Sonora, California
Mi-Wok District Ranger decisions:
The Union Democrat, Sonora, California
Summit District Ranger decisions:
The Union Democrat, Sonora, California

Tahoe National Forest

Tahoe Forest Supervisor decisions:
Grass Valley Union, Grass Valley, California
Downieville District Ranger decisions:
Mountain Messenger, Downieville, California
Newspaper providing additional notice of Downieveille decisions:
Grass Valley Union, Grass Valley, California
Foresthill District Ranger decisions:
Auburn Journal, Auburn, California
Nevada City District Ranger decisions:
Grass Valley Union, Grass Valley, California
Sierraville District Ranger decisions:
Mountain Messenger, Downieville, California
Newspapers providing additional notice of Serriaville decisions:
Sierra Booster, Loyalton, California
Portola Recorder, Portola, California
Truckee District Ranger decisions:
Sierra Sun, Truckee, Nevada County, California
Tahoe World, Tahoe City, Placer County, California

Dated: March 21, 1990.

John Neisess

Acting Regional Forester.

[FR Doc. 90-6853 Filed 3-26-90; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a press conference of the Connecticut Advisory Committee to the Commission will be convened at 1:30 p.m. on Friday, April 6, 1990, in the Conference Room of the Yale Law School, 127 Wall Street, New Haven. The purpose of the press conference is to release and discuss a March 1990 summary report by the Committee, entitled Southeast Asian Refugees and Their Access to Health and Mental Health Services, as part of a symposium on Refugees Facing Crisis in the 1990s.

Persons desiring additional information, or a pre-release copy of the summary report, should contact Committee Chairperson, Dr. Ivor J. Echols, (203/232-7274) or John I. Binkley, Director of the Eastern Regional Division, at (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the press conference and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the press conference.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC., March 20, 1990.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 90-6869 Filed 3-26-90; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that three subcommittee meetings of the Michigan Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 3 p.m., on April 5, 1990, at the Harley Hotel, 3600 Dunckel Road, Lansing, Michigan. The purpose of the meeting is to plan for two future community forums for 1990-91.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Dennis L. Gibson, or Farella E. Robinson, Civil Rights Analyst of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the

services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., March 20, 1990.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 90–6870 Filed 3–26–90; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held April 20, 1990, 9:30 a.m., in the Herbert C. Hoover Building, Room 1414, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary of Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 522b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination close meetings or portions of meetings of the committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377–2583.

Dated: March 21, 1990.

Ruth D. Fitts,

Acting Director, Technicial Advisory Unit.

[FR Doc. 90–6864 Filed 3–26–90; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings and Public Hearings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will hold public meetings on April 2–6, 1990, at the Eureka Inn, 7th and F Streets, Eureka, CA. On April 2 at 7 p.m., the Council will conduct the last of five public hearings on the options for 1990 ocean salmon fishery management measures. Except as noted below, the meetings are open to the public.

The Council will meet on April 3 at 8 a.m., to adopt tentative ocean salmon management measures for impact analysis. At 4 p.m., the Council will hear public comments on fishery management matters not related to its agenda. Public comments on all action items on the agenda will be accepted prior to Council action on each item.

On April 4 at 9 a.m., the Council will hold a close session (not open to the public) to discuss litigation and personnel matters. The Council will reconvene in open session at 9:30 a.m., to consider adoption of an amendment to the anchovy plan, which would provide for a small reduction fishery at lower levels of spawning biomass. The amendment also will include a definition of overfishing for the stock.

On April 4–5 the Council will discuss numerous groundfish management issues: (1) Limited entry; (2) yellowtail rockfish acceptable biological catch; (3) inseason management measure adjustments for rockfish and sablefish; (4) amendment #4 to the groundfish plan, (5) a definition of overfishing for groundfish; (6) draft offshore processing regulations; (7) an experimental fishing permit request to conduct a trawl mesh-size study; and (8) the roles and composition of the Groundfish Select Group and Groundfish Advisory Subpanel. On April 5 the Council also will discuss habitat issues which impact fisheries within the Council's jurisdiction.

The *Scientific and Statistical Committee* will meet on April 2 at 8 a.m., to address scientific issues on the Council's agenda, and will reconvene on April 3 at 8 a.m.

The *Salmon Advisory Subpanel* will meet on April 2–5 at 8 a.m., to address salmon management issues on the Council's agenda.

The *Salmon Technical Team* will meet as necessary on April 2–6 to assist the Salmon Advisory Subpanel, and to prepare analyses of 1990 management measures. On April 6 the Salmon Technical Team will present the results of the analyses to the Council, after which the Council will take final action on the 1990 management measures.

The *Groundfish Select Group (GSG)* will meet on April 2 at 1 p.m., to address inseason management adjustments, long-term sablefish management and to discuss the role of the GSG.

The *Groundfish Advisory Subpanel* will meet on April 3 at 8 a.m., to address groundfish management issues on the Council's agenda.

The *Budget Committee* will meet on April 4 at 8 a.m., to discuss the Council's 1990 budget.

The *Habitat Committee* will meet on April 5 at 8 a.m., to discuss habitat issues impacting fisheries under Council's jurisdiction.

Detailed agendas for the above meetings will be made available to the public after March 23, 1990. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: March 21, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–6812 Filed 3–26–90; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Brazil

March 20, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the

quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 369–D is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 13216, published on March 31, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 20, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1989 and extends through March 31, 1990.

Effective on March 23, 1990, the directive of March 27, 1989 is amended further to increase the current limit for Category 369–D [1] to 384,820 kilograms,[2] as provided under the provisions of the current agreement between the Governments of the United States and Brazil.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–6867 Filed 3–26–90; 8:45 am]

BILLING CODE 3510–DR–M

[1] Category 369–D: only HTS numbers 6302.60.0010, 5302.91.0005 and 6302.91.0045.

[2] The limit has not been adjusted to account for any imports exported after March 31, 1989.

Announcement of a Request for Bilateral Consultations with the Government of Mauritius

March 20, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On February 28, 1990, under the terms of section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Mauritius regarding cotton and man-made fiber nightwear and pajamas in Categories 351/651, produced or manufactured in Mauritius.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Mauritius, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Mauritius and exported during the twelve-month period which began on February 28, 1990 and extends through February 27, 1991, of not less than 82,117 dozen.

A summary market statement concerning these categories follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 351/651 or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, ATTN: Public Comments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 351/651. Should such a solution be reached in consultations with the Government of Mauritius, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Mauritius—Market Statement for Cotton and Man-Made Fiber Pajamas and Other Nightwear—Category 351/651

February 1990.

Import Situation and Conclusion

U.S. imports of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear (Category 351/651) from Mauritius reached 82,117 dozen during the year ending November 1989, nearly three times the 28,419 dozen imported a year earlier. During the first eleven months of 1989, imports of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear (Category 351/651) from Mauritius reached 78,150 dozen, nearly three times the amount imported in the first eleven

months of 1988 and two and one-half times the total amount imported in calendar year 1988. Imports from Mauritius were 4,164 dozen in 1987 and 30,964 dozen in 1988.

The sharp and substantial increase in Category 351/651 imports from Mauritius is causing disruption in the U.S. market for men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear.

U.S. Production and Market Share

U.S. production of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear (Category 351/651) declined from 19,244,000 dozen in 1987 to 18,453,000 dozen in 1988, a decline of four percent. During the first six months of 1989, production of Category 351/651 dropped to 7,863,000 dozen, 17 percent below the 9,521,000 dozen produced in the same period of 1988. The domestic manufacturers' share of the men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear market dropped from 78 percent in 1987 to 76 percent in 1988. The domestic manufacturers' share dropped to 74 percent during the first six months of 1989.

U.S. Imports and Import Penetration

U.S. imports of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear (Category 351/651) increased eight percent in 1988, increasing from 5,360,000 dozen in 1987 to 5,770,000 dozen in 1988. Imports accelerated in 1989, increasing 26 percent in the first eleven months of 1989 over the same period in 1988. The ratio of imports to domestic production increased three percentage points in 1988, increasing from 28 percent in 1987 to 31 percent in 1988. The ratio increased another five percentage points in the first half of 1989, reaching 36 percent.

Duty-Paid Value and U.S. Producers' Price

Approximately 91 percent of Category 351/651 imports from Mauritius during the first eleven months of 1989 entered under HTSUSA numbers 6108.31.0010—women's cotton woven nightdresses and pajamas. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 90-6865 Filed 3-26-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of a Request for Bilateral Textile Consultations With the Government of Nigeria

March 20, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultation have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On February 28, 1990, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Nigeria regarding cotton printcloth in Category 315, produced or manufactured in Nigeria.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Nigeria, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton printcloth in Category 315, produced or manufactrured in Nigeria and exported during the twelve-month period which began on February 28, 1990 and extends through the February 27, 1991, of not less than 5,622,689 square meters.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 315, or to comment on domestic production or availability of products included in the category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, ATTN: Public Comments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 315. Should such a solution be reached in consultations with the Government of Nigeria, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Nigeria—Market Statement for Cotton Printcloth—Category 315

February 1990.

Import Situation and Conclusion

U.S. imports of cotton printcloth—Category 315—from Nigeria reached 5,972,866 square meters in 1989, 93 percent above the 3,102,139 square meters imported a year earlier. Nigeria was the ninth largest supplier of Category 315 to the U.S. in 1989, accounting for 2 percent of total imports.

The sharp and substantial increase of Category 315 imports from Nigeria is disrupting the U.S. market for cotton printcloth.

Import Penetration and Market Share

U.S. production of cotton printcloth—Category 315—dropped to 226,509,000 square meters during the first three quarters of 1989, 27 percent below the same period in 1988. In contrast, U.S. imports of Category 315 increased 62 percent in the first three quarters of 1989 reaching 186,715,000 square meters and matching the calendar year 1988 total import level.

The U.S. producers' share of the cotton printcloth market dropped 16 percentage points, falling from 71 percent in January-September 1988 to 55

percent in January-September 1989. During this same period the ratio of imports to domestic production doubled, increasing from 40 percent durng the first three quarters of 1988 to 82 percent during the same period in 1989.

Duty-Paid Value and U.S. Producers' Price

Virtually all of category 315 imports from Nigeria entered under HTS number 5208.12.6060—unbleached, cotton printcloth weighing more than 100 grams per square meter of yarn numbers 43–68. These fabrics entered the U.S. at a duty-paid landed value below U.S. producers' prices for comparable cotton printcloth.

[FR Doc. 90–6866 Filed 3–26–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, applicable form, and applicable OMB control number: Vessel Operation Report; ENG Form 3925 and ENG Form 3925B; and OMB Control Number 0702–0008.

Type of request: Extension.

Average burden hours/minutes per response: 63 minutes for both forms.

Frequency of response: Monthly.

Number of respondents: 1,700.

Annual burden hours: 63,657.

Annual responses: 194,225.

Needs and uses: The Corps of Engineers uses ENG Form 3925 and ENG Form 3925B (optional form for use by Inland Waterways Operators) as the basic instrument to collect waterborne statistics. The data collected details the movement of freight and passengers on the U.S. navigable waterways and habors. It is also critical to the enforcement of the "Harbor Maintenance Tax" authorized under Section 1402 of Public Law 99–662.

Affected public: Businesses or other for-profit; Small businesses or organizations.

Frequency: Continuing.

Respondent's obligation: Mandatory.

OMB desk officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: March 21, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–6821 Filed 3–26–90; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, applicable form, and applicable OMB control number: Officer Candidate Inquiry; NAVCRUIT Form 1131/11; and No OMB Control Number.

Type of request: New.

Average burden hours/minutes per response: .25 Hours.

Frequency of response: One-time only.

Number of respondents: 20,000.

Annual burden hours: 5,000.

Annual responses: 20,000.

Needs and uses: The form is needed to determine if applicants are the best qualified for a commission in the U.S. Navy or U.S. Naval Reserve. Individuals that have been identified by officer applicants as employer, academic or personal references are affected.

Affected public: Individuals or households.

Frequency: Continuing.

Respondent's obligation: Voluntary.

OMB desk officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer. Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Dated: March 21, 1990.

[FR Doc. 90–6822 Filed 3–26–90;8:45am]

BILLING CODE 3810–01–M

Army Civilian Executive Advisory Committee; Establishment

ACTION: Establishment of the Army Civilian Executive Advisory Committee.

SUMMARY: Under the provisions of Public Law 92–463, "Federal Advisory Committee Act," notice is hereby given that the Army Civilian Executive Advisory Committee has been determined to be necessary and in the public interest, and is being established.

The Army Civilian Executive Advisory Committee will provide advice to the Secretary of the Army and the Army Chief of Staff regarding potentially changing roles and missions for the U.S. Army in fulfilling national security requirements. The general scope of activities envisioned for the Army Civilian Executive Advisory Committee will include: assessing a wide range of social, cultural, political, and economic issues and suggesting future Army roles consistent with changes in the domestic and international environments; reviewing current and projected Army policies and programs to determine their validity and likely effectiveness in the light of emerging trends; and, recommending alternative policies and postures for fulfilling the Army's present and future national security roles.

The Army Civilian Executive Advisory Committee will be composed of a well-balanced membership of distinguished public citizens from a broad spectrum of societal sectors, to include: Business, public service, the professions, academia, and the communications media.

Dated: March 21, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–6824 Filed 3–26–90; 8:45 am]

BILLING CODE 3810–01–M

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.

DATES: The meeting will be held at 0900, Wednesday, 25 April 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, 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 Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group 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 Public Law No. 92–463, as amended, (5 U.S.C. App. II section 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.

Dated: March 21, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–6823 Filed 3–26–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 22, 1990.

The USAF Scientific Advisory Board Munition Systems Division Advisory Group will meet on April 11, 1990 from 8 a.m. to 5 p.m. in the Pentagon, Washington, DC.

The purpose of this meeting is to conduct a technical assessment of the reliability and producibility of the AMRAAM missile, in support of an ongoing Defense Acquisition Board (DAB) review of AMRAAM. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–6896 Filed 3–26–90; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 27–28 April 1990.

Time: 0800–1630 hours each day.

Place: Chicago, Illinois.

Agenda: The Army Science Board (ASB) Steering Group will meet to discuss future Army Science Board study topics and potential Summer Studies as well as how the Army Science Board can provide assistance. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–6884 Filed 3–26–90; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 12–13 April 1990.

Time: 0830–1630 each day.

Place: Falls Church, Virginia.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Threat of AIDS on Operational Deployments of Army Forces to a Theater will meet. The purpose of the meeting is to update the status of the report with the panel members, and modify the existing final draft report with recent findings. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–6882 Filed 3–26–90; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 17–19 April 1990.

Time: 0800–1630 hours each day.

Place: Military Professional Resources Inc., 1201 Abingdon Drive, Suite 425, Old Town, Alexandria, VA 22314, The Pentagon, Washington, DC 20310–0104, Headquarters Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

Agenda: The Army Science Board (ASB) 1990 Summer Study on The Use of Army Systems and Technologies in the National War on Drugs will meet for discussions focused on the current threat, mission, functions and technology challenges facing the Army's involvement in the National War on Drugs. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–6883 Filed 3–26–90; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the

Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows:

Switzerland to France for the purposes of reprocessing, 36 irradiated fuel assemblies, containing approximately 6,348 kilograms of uranium, enriched to approximately 0.82% in U-235 and 54 kilograms of plutonium, from the Muhleberg nuclear power station. The subsequent arrangement is designated assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Dated: March 21, 1990.

Richard H. Williamson,

Association Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-6912 Filed 3-26-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-997-000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP90-997-000]

March 19, 1990.

Take notice that on March 16, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-997-000 a request pusuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ladd Gas Marketing, Inc. (Ladd), a marketer, under the blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation service agreement dated March 15, 1989, under its Rate Schedule ITS, it proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas for Ladd. ANR states that it would transport the gas from receipt points located offshore Louisiana and Texas gathering areas, and in the states of Louisiana, Texas, Oklahoma, and Kansas, and would redeliver the gas for the account of Ladd at existing interconnections located in the state of Wisconsin.

ANR advises that service under § 284.223(a) commenced January 16, 1990, as reported in Docket No. ST90-1846-000. ANR further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: May 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Mississippi River Transmission Corporation

[Docket No. CP90-979-000]

March 19, 1990.

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri, 63124, filed in Docket No. CP90-979-000, a request pursuant to §§ 17.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate issued in Docket No. CP89-1121-000, a maximum of 3,588 MMBtu of natural gas for Anheuser-Busch Companies (Anheuser-Busch), all as more fully set forth in the request on file with the Commission and open to public inspection.

MRT indicates that service commenced January 30, 1990 under § 284.223 (a) of the Commission Regulations, as reported in Docket No. ST90-1945-000 and estimates the volumes transported to be 3.588 MMBtu on a peak day and average day, and 1,309,620 MMBtu on an annual basis.

MRT proposes to transport natural gas for Anheuser-Busch from receipt points located in Louisiana, Texas, Arkansas and Illinois to delivery points located in Missouri.

MRT indicates that it will utilize existing facilities to provide the transportation service proposed herein.

Comment date: May 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP90-995-000]

March 19, 1990.

Take notice that on March 15, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90-995-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Lighthouse Gas Marketing Company (Lighthouse), a marketer, under the blanket certificate issued in Docket No. CP86-240-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states that pursuant to a transportation service agreement dated December 10, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Lighthouse. Columbia states that it would transport the gas from various Appalachian meters on its pipeline system, as specified in Appendix "A" of the service agreement, and would deliver the gas (less fuel when applicable) to existing interconnections with its transmission system.

Columbia advises that service under § 284.223(a) commenced December 15, 1989, as reported in Docket No. ST90-2064-000. Columbia further advises that it would transport 8,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: May 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. ANR Pipeline Company

[Docket No. CP90-976-000]

March 20, 1990.

Take notice that on March 14, 1990, ANR Pipeline Company (ANR), 500

Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–976–000, a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Union Exploration Partners, Ltd. (Union), a shipper, under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Union. ANR further states that it would receive the natural gas at ANR's existing points of receipt located in the offshore Louisiana gathering area and would redeliver the natural gas for the account of Union at existing interconnections located in the offshore Louisiana gathering area. ANR indicates that the average day and annual volumes of natural gas to be transported would be 50,000 dt and 18,250,000 dt, respectively.

ANR states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on January 15, 1990, as reported in Docket No. ST90–1813–000.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP90–988–000]

March 20, 1990.

Take notice that on March 14, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–988–000 a request pursuant to §157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Enermark Gas Gathering Corporation (Enermark), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport, on an interruptible basis, up to a maximum of 75,000 dekatherms of natural gas per day for Enermark from receipt points located in Offshore Louisiana, Louisiana, Offshore Texas, Texas, Mississippi, New Jersey, Tennessee, New York, Massachusetts and Kentucky to delivery points located in Alabama, Louisiana, Mississippi, West Virginia, Tennessee, Kentucky, Ohio and Massachusetts. Tennessee anticipates transporting 75,000 dekatherms on an average day and an annual volume of 27,375,000 dekatherms.

Tennessee states that the transportation of natural gas for Enermark commenced February 15, 1990, as reported in Docket No. ST90–2199–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87–115–000.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corporation

[Docket No. CP90–987–000]

March 20, 1990.

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed a request with the Commission in Docket No. CP90–987–000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas on behalf of SPX Corporation (SPX), a natural gas shipper and end-user, under the blanket certificate issued in Docket No. CP89–1121–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

MRT proposes an interruptible natural gas transportation service of up to 14,120 MMBtu equivalent on peak days, 3,022 MMBtu equivalent on average days, and 1,103,000 MMBtu equivalent annually for SPX. MRT would receive gas at various Arkansas, Illinois, Louisiana, and Texas receipt points and deliver the gas for SPX' account at various Arkansas and Missouri delivery points. MRT states that it commenced transporting natural gas for SPX on January 28, 1990, under § 284.223(a) of the Regulations, as reported in Docket No. ST90–1949.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Mississippi River Transmission Corporation

[Docket No. CP90–977–000]

March 20, 1990.

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90–977–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Trans Marketing Houston, Inc. (TMH), under MRT's blanket certificate issued in Docket No. CP89–1121–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to transport, on an interruptible basis, up to 300,000 MMBtu equivalent of natural gas on a peak day for TMH, 300,000 MMBtu equivalent on an average day, and 109,500,000 on an annual basis. It is stated that MRT would receive the gas for TMH's account at designated points on MRT's system in Texas, Louisiana, Arkansas, Oklahoma and Illinois, and would deliver equivalent volumes at designated points on MRT's system in Texas, Louisiana, Arkansas, Illinois and Missouri. It is asserted that existing facilities would be used for the transportation service and that no construction of new facilities would be required. It is explained that the transportation service commenced January 28, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–1943.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP90–971–000]

March 20, 1990.

Take notice that on March 13, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–971–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Mobil Natural Gas Inc. (Mobil), a producer of natural gas under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 250,000 MMBtu of natural gas per day, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for Mobil from receipt points located in Texas, Offshore Texas, Louisiana, Offshore Louisiana, Illinois, Oklahoma, New Mexico, Arkansas and Kansas to delivery points located in Texas, Offshore Texas, Iowa, Offshore Louisiana, Kansas and Arkansas.

Natural anticipates transporting 50,000 MMBtu on an average day and an annual volume of 18,250,000 MMBtu.

Natural states that the transportation of natural gas for Mobil commenced January 13, 1990, as reported in Docket No. ST90–2229–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Mississippi River Transmission Corporation

[Docket No. CP90–986–000]

March 20, 1990.

Take notice that on March 14, 1990, Mississippi River Transmission (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed a request for authorization at Docket No. CP90–986–000, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act to provide interruptible transportation service for Transco Energy Marketing Company (Transco), a shipper and marketer, under MRT's blanket certificate issued at Docket No. CP89–1121–000, all as more fully set forth in the request on file with the Commission and open for public inspection.

MRT proposes to transport, on an interruptible basis, up to a maximum of 150,000 MMBtu of natural gas per day for Transco from receipt points located in the States of Texas, Louisiana, Arkansas and Illinois to delivery points located in the States of Texas, Louisiana, Arkansas, Illinois and Missouri. MRT states that Transco estimates MRT would transport 150,000 MMBtu on an average day and 54,750,000 MMBtu on an annual basis.

MRT further states that transportation of natural gas for Transco commenced on January 17, 1990, as reported at Docket No. ST90–1869–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90–6825 Filed 3–26–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–811–003, et al.]

CNG Trading Co, et al.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment

March 20, 1990.

Take notice that each Applicant [1] listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1990, to extend such authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before March 27, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

APPENDIX

Docket No.	Date filed	Applicant
CI87–811–003	3–15–90	CNG Trading Company, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199.
CI89–382–001	3–19–90	KN Gas Marketing, Inc., P.O. Box 15265, Lakewood, Colorado 80215.

[FR Doc. 90–6826 Filed 3–26–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–968–000, *et al.*]

National Fuel Gas Supply Corp. et al.; Natural Gas Certification Filings

March 16, 1990.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply

[Docket No. CP90–968–000]

Take notice that on March 12, 1990, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, has filed pursuant to section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717(b); §§ 153.1 through 153.12 of the Commission's Regulatons, 18 CFR 153.1 through 153.12; Executive Order No. 10485, as amended by Executive Order No. 12038; and Delegation Order No. 0204–112 of the Secretary of Energy, an application and an Application for a Presidential Permit for authority for the siting, construction, connection, operation and maintenance of pipeline facilites at the international border between the United States and Canada. Such facilities will be used for the importation of natural gas into the United States. The natural gas which will be imported using these facilities will originate in the United States and Canada and will be purchased and shipped through National's facilities by local distribution companies, end users and marketers of natural gas (knows as shippers), all as more fully set forth in the request on file with the Commission and open for public inspection.

National's proposed pipeline facilities would establish an interconnection between the natural gas transmission systems of National and TransCanada

Pipelines, Limited (TransCanada), a Canadian corporation, at a point on the international border under the Niagara River, proximate to Grand Island, New York. This would enable National to receive natural gas from TransCanada which gas National would then transport to points within the United States through National's existing Line X and through interstate pipeline facilities proposed by National under Docket Nos. CP90–854–000 and CP90–920–000.

National states that its proposal is a mutually exclusive alternative to the border crossing facilities proposed by Empire State Pipeline Company (Empire) in Docket Nos. CP90–316–000 and CP90–317–000. National would use its proposed facilities to transport gas for Empire or its shippers, and for Indeck Energy Services of Ilion, Inc., Indeck Energy Services of Corinth, Inc., and EDC Four Inc. These shippers will determine the source or sources of natural gas to be transported by National.

Comment date: April 6, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP90–961–000]

Take notice that on March 12, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–961–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Thompson Valley Gas Inc. (Thompson), a shipper and processor of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 10,000 dekatherms (dt) of natural gas equivalent per day on an interruptible basis on behalf of Thompson pursuant to a transportation agreement dated November 15, 1989, between Panhandle and Thompson. Panhandle would receive the gas at various existing interruptible points of receipt on its system in Colorado and deliver equivalent volumes, less fuel used and unaccounted for line loss, to Thompson in Weld County and Colorado.

Panhandle states that the estimated daily and annual quantities would be 3,000 dkt and 1,095,000 dt, respectively. Service under § 284.223(a) commenced on February 1, 1990, as reported in Docket No. ST90–2010–000.

Comment date: April 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP90–964–000]

Take notice that on March 12, 1990, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–964–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Anadarko Trading Company (Anadarko), a marketer, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on a firm basis up to 3,500 dt equivalent of natural gas on a peak day, 3,500 dt equivalent on an average day and 1,227,500 dt equivalent on an annual basis for Anadarko. Panhandle states that it would perform the transportation service for Anadarko under Panhandle's Rate Schedule PT. Panhandle indicates that it would transport the gas from a receipt point in Reno County, Kansas to Central Illinois Public Service at various delivery points located in Illinois.

It is explained that the service commenced February 1, 1990, under the automatic authorization provisions of section 284.223 of the Commission's Regulations, as reported in Docket No. ST90–2013. Transco indicates that no new facilities would be necessary to provide the subject service.

Comment date: April 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Mississippi River Transmission Corporation

Docket No. CP90–980–000]

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90–980–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kaztex Energy Management, Inc. (Kaztex) under its blanket authorization issued in Docket No. CP89–1121–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT would perform the proposed interruptible transportation service for Kaztex, an agent for end users of natural gas, pursuant to a gas transportation agreement dated December 12, 1989 (Contract #152). The term of the transportation agreement became effective as of January 1, 1990, and shall continue for a primary term ending December 31, 1994, and shall continue month to month thereafter unless cancelled upon 30 days' prior written notice by either MRT or Kaztex. MRT proposes to transport on a peak day up to 30,000 MMBtu; on an average day up to 30,000 MMBtu; and on an annual basis 10,956,000 MMBtu for Kaztex. MRT proposes to receive the subject gas from existing points of receipt on its system in Texas, Louisiana, Arkansas, and Illinois for transportation to existing delivery points located in Missouri. It is stated that Kaztex shall pay, or cause to be paid, to MRT each month for all services provided under the gas transportation agreement, the maximum applicable rate and any other charges specified in MRT's FERC Gas Tariff, Original Volume No. 1–A, as on file and in effect from time to time, for each service rendered.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. MRT commenced such self-implementing service on February 21, 1990, as reported in Docket No. ST90–1948–000.

Comment date: April 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Mississippi River Transmission Corporation

[Docket No. CP90–984–000]

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90–984–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Conoco, Inc. (Conoco), under MRT's blanket certificate issued in Docket No. CP89–1121–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT requests authorization to transport, on an interruptible basis, up

to a maximum of 50,000 MMBtu of natural gas per day for Conoco from receipt points located in Texas, Louisiana, Arkansas and Illinois to delivery points located in Missouri. MRT anticipates transporting, on an average day 50,000 MMBtu and an annual volume of 18,250,800 MMBtu.

MRT states that the transportation of natural gas for Conoco commenced January 24, 1990, as reported in Docket No. ST90–1916–000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to MRT in Docket No. CP89–1121–000.

Comment date: April 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Florida Gas Transmission Company

[Docket No. CP90–909–000]

Take notice that on March 5, 1990, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP90–909–000, an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations hereunder, for a certificate of public convenience and necessity authorizing the construction of a new pipeline lateral and two new points of delivery to Florida Power and Light Company (FPL) at FPL's Lauderdale Power Plant (Lauderdale Plant) located in Broward County, Florida. Each of the proposed delivery points will include a meter within the meter station to measure quantities of gas FGT delivers to FPL's Lauderdale Plant within the volumes authorized in the sales and transportation agreements between FGT and FPL. The new meter station will enable FPL to separately regulate two streams of gas to accommodate the varied pressure requirements of the different generating units at the Lauderdale Plant. FGT is not proposing an increase in volumes authorized to be delivered to FPL, but proposing only to increase flexibility of deliveries at the Lauderdale Plant, all as more fully set forth in the request on file with the Commission.

Comment date: April 6, 1990, in accordance with Standard Paragraph F at the end of this notice.

7. Mississippi River Transmission Corporation

[Docket No. CP90–983–000]

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90–983–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phibro Distributors Corporation (Phibro), a marketer, under the blanket certificate issued in Docket No. CP89–1121–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT states that pursuant to a transportation service agreement dated November 29, 1989, under its Rate Schedule ITS, it proposes to transport up to 250,000 MMBtu per day equivalent of natural gas for Phibro. MRT states that it would transport the gas from receipt points located in Texas, Louisiana, Arkansas and Illinois, and would redeliver the gas to delivery points located in Texas, Louisiana, and Arkansas.

MRT advises that service under § 284.223(a) commenced January 18, 1990, as reported in Docket No. ST90–1868–000 (filed February 15, 1990). MRT further advises that it would transport 250,000 MMBtu on an average day and 91,250,000 MMBtu annually.

Comment date: April 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP90–940–000]

Take notice that on March 8, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–940–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate issued in Docket No. CP88–6–000, a maximum of 103,000 MMBtu on behalf of Louis Dreyfus Energy Corp., a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that service commenced January 23, 1990, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST90–01960, and estimates the volumes transported to be 103,000 MMBtu per day on peak day and average day, and 37,595,000 MMBtu on an annual basis.

United also indicates that no new facilities are to be constructed.

Comment date: April 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP90–960–000]

Take notice that on March 12, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP90–960–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas on an interruptible basis, under its blanket certificate issued in Docket No. CP86–585–000, a maximum of 5,000 dth. per day of natural gas on behalf of Amgas, Inc. a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle indicates that service commenced February 3, 1990, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–2009, and estimates the volumes transported to be 5,000 Dth. on peak day, 2,500 Dth. on an average day and 912,500 Dth. on an annual basis. It is asserted that Panhandle would receive gas from various existing points of receipt in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma, Texas and Wyoming, and would then transport and redeliver such gas, less fuel and unaccounted line loss gas to Central Illinois Light Company, Peoria Nos. 1 & 2, Tazewell, County, Illinois. No new facilities will be constructed, it is stated.

Comment date: April 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-6819 Filed 3-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-168-000]

National Electric Associates Limited Partnership; Order Disclaiming Jurisdiction, Granting Request for Waivers and Approvals, and Accepting Rate Schedule for Filing

Issued March 20, 1990.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

On January 19, 1990, National Electric Associates Limited Partnership (NEA) filed a petition requesting disclaimer of jurisdiction, waivers of certain Commission regulations, granting of certain blanket approvals, and acceptance of NEA's proposed rate schedule. NEA requests an effective date 60 days after filing.

Background

NEA is an affiliate of Tang Industries, a privately-held corporation principally engaged in steel processing and distribution, metals recycling, and aluminum smelting. NEA intends to serve both as a broker and a marketer of electric power. As a broker, NEA proposes that it will not take title to electric power but will charge a fee for matching buyers and sellers of wholesale power; as a marketer, NEA proposes to purchase and resell electric power to non-affiliates at mutually agreed upon rates, at or below the buyer's cost of alternative supply. NEA states that neither it nor any of its affiliates owns, controls or operates any facilities for the generation, transmission or distribution of electric energy.

NEA requests, consistent with Commission precedent,[1] that we disclaim jurisdiction over NEA's brokering transactions since NEA states that it will not take title to the electric power but will only charge a fee in those transactions.

NEA recognizes Commission jurisdiction over its power marketing activities.[2] NEA requests that, consistent with the Commission's findings in *Citizens Power & Light Corporation* (*Citizens Power*),[3] the Commission grant waivers of certain of its regulations and grant blanket approvals concerning matters governed by other regulations for its proposed power marketing activities.[4]

NEA has filed a proposed tariff that it states is materially identical to the one for which waivers and blanket approvals were granted in *Citizens Power*. NEA states that, as in *Citizens Power*: it will own no generating units or transmission lines, although its corporate structure and documents will be jurisdictional; the costs of the marketing transactions will be determined by the sellers; earnings will not be defined and regulated in terms of an authorized return on capital as would be the conventional public utility case; and, NEA does not intend to obligate itself to serve electricity consumers. NEA seeks the same waivers and blanket approvals granted to Citizens Power for its marketing activities, subject to a reservation of the right to request at a later date confidential and privileged treatment of certain information provided to the Commission pursuant to 18 CFR 388.112.

NEA requests that the Commission accept its proposed tariff for power marketing transactions. NEA states that its proposed tariff provides for the sale of power by NEA to any non-affiliated customer at mutually agreed prices, at or below the purchaser's expected alternative cost for similar electric power.

NEA states that, as in *Citizens Power*, it neither owns nor is affiliated with any owner of transmission facilities; it is not affiliated with any entity having a franchised electric service territory; and therefore it has no market power. NEA argues that the Commission can rely and has relied on market forces to control rates and to prevent them from becoming excessive, if the seller has no market power.[5] NEA further states that, under the proposed rate schedule, the purchaser will provide a written representation to NEA that the purchase is at or below the buyer's expected alternative cost of similar electric power to be purchased. NEA states that this representation will provide a formal price cap in any transaction. To further protect against self-dealing, NEA's proposed rate schedule bars affiliate sales (*i.e.*, no sale may be made to any entity controlled by, under common control with, or controlling NEA).

Notice of NEA's filing was published in the **Federal Register**, with comments, protests, or interventions due on or

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[1] Citizens Energy Corporation, 35 FERC ¶ 61,198 (1986) (*Citizens Energy*); Howell Gas Management Co., 40 FERC ¶ 61,336 (1987) (*Howell*); Torco Energy Marketing, Inc., 48 FERC ¶ 61,294 (1989) (*Torco*).

[2] NEA states that the Commission is currently reviewing in Citizens Power and Light Corporation, Docket No. EL89-31-000, a petition for declaratory order seeking a disclaimer of jurisdiction over a power marketing entity. NEA requests that since its marketing activities are not materially different from those proposed by Citizens Power, any disclaimer awarded to the marketing activities in that docket should apply to NEA.

[3] 48 FERC ¶ 61,210 (1989).

[4] NEA seeks waiver of the following: parts 41, 101, and 141 (Uniform System of Accounts and related reporting requirements); part 50 (requirement to file procurement policies and practices); parts 45 and 46 (interlocking directorates); Subparts B and C of part 35, except §§ 35.12(a), 35.13(b), 35.15 and 35.16 (reporting requirements). NEA also seeks blanket approvals as to part 34 (future issuances of securities and assumptions of liability).

[5] NEA cites: Ocean States Power, 44 FERC ¶ 61,261 (1988); Transwestern Pipeline Co., 43 FERC ¶ 61,240 (1988); Pacific Gas and Electric Co., 42 FERC ¶ 61,046 (1988); Orange and Rockland Utilities, Inc., 42 FERC ¶ 61,012 (1988); Baltimore Gas and Electric Co., 40 FERC ¶ 61,170 (1987); Pacific Gas and Electric Co., 38 FERC ¶ 61,242 (1987).

before February 15, 1990.[6] No comments, protests, or interventions were filed.

Discussion

Consistent with the Commission's findings in *Citizens Energy,*[7] we find that NEA's power brokering activities do not involve any purchase or sale of power by NEA, and consequently no question of jurisdiction arises. Accordingly, we disclaim jurisdiction over NEA's brokering activities.

To approve NEA's proposed rate schedule under the Federal Power Act (FPA), the Commission must find that it falls within a "zone of reasonableness."[8] The zone is "bounded at one end by the investor interest against confiscation and at the other end by the consumer interest against exorbitant rates."[9] The Commission has allowed considerable pricing flexibility, and concluded that flexibile rates fall within the zone of reasonableness in circumstances where the seller could show that it lacks market power and there is a pricing cap based either on the seller's cost[10] or on the purchaser's avoided cost.[11]

NEA's power marketing proposal addresses these concerns in the same way that Citizens Power's proposal, did[12] and its proposed tariff is identical to that on file for Citizens Power. NEA owns no generation or transmission facilities. NEA is not affiliated with any entity that owns transmission facilities. NEA is not affiliated with any entity that has a franchised service territory. Consequently, based on the facts before us, we find that NEA has characteristics that provide us with sufficient assurance that it lacks market power. In addition, since NEA will sell only to non-affiliates, it will not be able to engage in self-dealing. Moreover, NEA will explicitly require buyers to state that the purchase is at or below the buyers' alternative costs, thus providing a price cap. Accordingly, as in *Citizens Power,* we will accept NEA's proposed rate schedule for filing.

As in *Citizens Power,* NEA could obtain control of generation or transmission facilities, which would require a review of its market power and opportunities for self-dealing.[13] To protect against such eventuality, as in *Citizens Power,* we will attach two reporting conditions to our approval:[14] (1) that NEA promptly file with the Commission a notice of any change in status or any change in organization or operation that would constitute a departure from the characteristics the Commission relied on in accepting NEA's proposed rate schedule; and (2) that NEA make quarterly informational filings concerning each purchase contract and each sale contract, with the first filing due on June 30, 1990.[15]

As we stated in *Citizens Power,* we believe that the conditions and safeguards adopted here to ensure continuing lack of market power by NEA, combined with the condition that rates be at or below the purchaser's expected alternative cost, will provide a rate that is legally sufficient under the FPA.[16]

Because NEA's rates are market-based, as in *Citizens Power,* the cost data requirements under subparts B and C of part 35 of the Commission's regulations are inapplicable.[17] We will, therefore, grant NEA's request to waive these requirements, in part. In addition to the contract information discussed above, we will also require NEA to file notices of cancellation and succession. In addition, NEA must file any revision to its formula for computing rates.

The Commission will also grant the additional waiver and blanket approvals requested by NEA, consistent with *Citizens Power* and the cases cited therein, as discussed below.[18] Parts 41, 101, and 141 prescribe certain informational requirements that focus on the assets that a utility owns. Since, as in *Citizens Power,* NEA will not own any electric power generation or transmission facilities, we will grant waivers of the requirements of these parts. Similarly, we will waive the requirements of part 50 related to procurement policies and practices since NEA will not engage in such activities. Parts 45 and 46 prescribe filing requirements for interlocking directors. As noted in our previous cases, the Commission cannot waive the statutory requirements of section 305 of the FPA[19] which prohibit interlocking directorates without Commission authorization. We will, therefore, require only an abbreviated statement identifying any jurisdictional interlock and will reserve the right to require a further showing that public or private interests are not adversely affected.[20]

We will also grant NEA's request for blanket approval under part 34 for all future issuances of securities and assumptions of liability, subject to objection by any interested party, as ordered herein.[21] Since the purpose of part 34 is to ensure the financial viability of public utilities obligated to serve electric consumers, and NEA does not intend to obligate itself to serve electric consumers, the requirements are inapplicable.

Because NEA has given only a general description of how it intends to operate and there is no way to anticipate the future scope or structure of its activities, we will put NEA on notice that its rates will remain subject to the statutory standards of the FPA and that the waivers and blanket approvals granted herein may be rescinded in the future if the Commission finds that they adversely impact upon the Commission's ability to meet its statutory obligations under the FPA.

The Commission orders

(A) NEA's request for waiver of parts 41, 50, 101, and 141 of the Commission's regulations is hereby granted.

(B) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by NEA 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

[6] 55 Fed. Reg. 4658 (1990).

[7] 35 FERC at 61,453.

[8] *E.g.,* Alabama Electric Cooperative v. FERC, 684 F.2d 20, 27 (D.C. Cir. 1982).

[9] *E.g.,* Jersey Central Power & Light Co. v. FERC, 810 F.2d 1168, 1177 (D.C. Cir. 1987).

[10] *See, e.g.,* Pacific Gas and Electric Co. (Turlock), 42 FERC ¶ 61,406, *order on rehearing,* 43 FERC ¶ 61,403 (1988).

[11] *E.g.,* Orange and Rockland Utilities, Inc., 42 FERC ¶ 61,012 (1988).

[12] *See* 48 FERC at 61,776–77.

[13] *Id.* at 61,777.

[14] Id. at 61,777–78.

[15] The filing requirements adopted here incorporate the requirements outlined in *Citizens Power:* the buyer's or seller's name; a brief description of the service, including degree of firmness; the delivery points; the quantities; the prices; the contract's duration; the buyer's certification that the rate is equal to or below its alternative costs; and any other attributes that contribute to its market value. *Id.* at 61,778.

To the extent that NEA may request confidential treatment under 18 CFR 388.112 of its rates and terms and conditions of service in its sale contracts, this treatment will not be available. Section 205(c) of the FPA requires all public utilities, including NEA as a power marketer, to file with the Commission for public inspection all rates, charges, classifications, and practices, as well as any contracts that affect or relate to such rates, charges, classifications, and practices. 16 U.S.C. 824d(c) (1988).

[16] 48 FERC at 61,779.

[17] Subparts B and C of part 35 require *inter alia* cost data to be submitted with initial rate filings and rate change filings under section 205 of the FPA, and information concerning calculations, changes in suspended rates, information by reference, refund requirements, research and development clauses, percentage adders, tax normalization, and construction work in progress.

[18] 48 FERC at 61,779–80.

[19] 16 U.S.C. § 825d (1988).

[20] *See* 48 FERC at 61,780.

[21] *See id.*

214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 358.211 and 385.214).

(C) Absent a request for hearing within the period set forth in Ordering Paragraph (B) above, NEA is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(D) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of NEA's issuances of securities or assumptions of liability.

(E) Until further order of this Commission, any person now holding or who may hold an otherwise proscribed interlock involving NEA is authorized to hold such position provided that such person files the application required by Ordering Paragraph (F) below.

(F) Until further order of this Commission, the full requirements of parts 45 and 46 of the Commission's regulations, except as noted below, are hereby waived with respect to those persons subject to Ordering Paragraph (E) above, and those persons instead shall file a sworn application providing the following information:

(1) Full name and business address; and

(2) All jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(G) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by the continued holding of the interlocks addressed above.

(H) NEA's request for waiver of the provisions of subparts B and C of parts 35 of the Commission's regulations is hereby granted in part, as discussed in the body of this order.

(I) NEA's rate schedule is hereby accepted for filing to be effective March 20, 1990,[22] conditioned upon the compliance filing and the filing requirements in Ordering Paragraphs (J), (K), and (L) below.

(J) Within 30 days of the date of this order, NEA will notify the Commission whether it accepts the conditions discussed in the body of this order.

[22] The rate schedule designation is: *National Electric Associates Limited Partnership* Rate Schedule FERC No. 1.

Absent such approval Ordering Paragraph (I) above will be void, as of the date of this order.

(K) NEA will submit a statement within 30 days of this order that satisfies the requirements that a marketer must meet at the time of filing a request to obtain pricing flexibility.

(L) NEA will submit quarterly an informational filing, as discussed in the body of this order. The first quarterly informational filing will be due on June 30, 1990.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 90-6820 Filed 3-26-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59264B; FRL 3736-6]

Certain Chemical; Approval of Mofidifications to Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval modifications of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME-89-1. The test marketing conditions are described below.

EFFECTIVE DATE: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemcial Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460 (202) 382-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modification of the test marketing period for TME-89-1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application and modification request, and for the modified time period specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-89-1

Notice of Approval of Original Application: December 5, 1988 (53 FR 48974).

Ending Date of Modified Test Marketing Period: May 5, 1990.

Commencing On: Date of manufacture.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the envrionment.

Dated: March 15, 1990.

John Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 90-6914 Filed 3-26-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-59280B; FRL 3733-2]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-90-4.

EFFECTIVE DATE: March 16, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Wright III, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room

E-613, 401 M Street, SW., Washington, DC 20460, (202) 382-7800.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substance for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify, revoke or deny a test marketing exemption upon receipt of information which cast significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-90-4. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application and amendment, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application and amendment. All other conditions and restrictions described in the application and amendment and in this notice must be met.

The following additional restrictions apply to TME-90-4:

1. The Company shall dispose of all wastes of the TME substance produced during manufacture only by incineration. This provision does not supersede or preempt any applicable federal, state, and local laws and regulations.

2. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created and shall make them available for inspection and copying in accordance with section 11 of TSCA:

A. Records of the quantity of the TME substance produced and the date of manufacture.

B. Records documenting the names and addresses (including shipment destination address, if different) of all persons outside the site of manufacture to whom the Company directly sells or transfers the TME substance, the date of each sale or transfer, and the quantity of the substance sold or transferred on such date.

C. Copies of the bill of lading that accomapanies each shipment of the TME substance.

D. Records documenting compliance with the disposal requirement for incineration of all wastes produced during manufacture including method of disposal, location of disposal sites, dates of disposal, and volume of TME substance disposed. Where the estimated disposal volume is not known to the Company and is not reasonably ascertainable by the Company, the Company must maintain other records which demonstrate establishment and implementation of a program that ensures compliance with any applicable disposal requirements.

T-90-4

Date of Receipt: January 31, 1990.

Notice of Receipt: February 26, 1990 (55 FR 6679).

Applicant: Confidential.

Chemical: (G) Modified alpha terpinene and alpha phellandrene camphene.

Use: (G) Used on inedible foliage of agricultural crops.

Production Volume: 118,300 kilograms.

Number of Customers: Confidential.

Worker Exposure: Non via inhalation; some dermal exposure without gloves.

Test Marketing Period: 1 year, commencing on the first day of commerical manufacture.

Risk Assessment: EPA identified a health concern for acute toxicity based on the amine salts for the test market substance. However, because worker exposure will be minimal, the risk to human health is expected to be negligible.

EPA also identified environmental concerns for the TME substance. Based on test data on analogous compounds EPA expects chronic toxicity to aquatic organisms at a concentration of 200 ppb TME substance in surface waters. During manufacture at 1 site up to 10 days per year, release of 2 kilograms per day after POTW treatment would result in a surface water concentration of approximately 590 ppb. However, the submitter amended the TME application to agree to dispose all TME substance waste produced during manufacture by incineration only. Releases to water are negligible during use. Therefore, the test market substance will not present an unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: March 16, 1990.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 90-6915 Filed 3-26-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-44548; FRL 3735-5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on cumene (CAS No. 98-82-8), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for cumene was submitted by the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.1285. It was received by EPA on March 12, 1990. The submissions describe tests of acute toxicity to: (1) Rainbow trout, (2) sheepshead minnow (3) mysid shrimp, (4) daphnids, and (5) mysid. All test were done under flow-through conditions. Acute toxicity testing is required by this test rule. This chemical is used for the production of phenol and acetone.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44548). This record includes copies of all

studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: March 20, 1990.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90–6916 Filed 3–26–90; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010012–019.

Title: Australia-Pacific Coast Rate Agreement.

Parties:

Hamburg-Sudamerikanische Dampfshifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line)
Associated Container Transportation (Australia) Limited (Pace Line)

Synopsis: The proposed amendment woud delete from the Agreement the following: (1) The words "the apportionment of traffic, including in particular" from Article 5(c); (2) Article 5(i); and (3) The last paragraph of Article 11. The first and last paragraphs of Article 13 have been reworded.

Agreement No.: 202–010268–016.

Title: Australia/Eastern U.S.A. Shipping Conference.

Parties:

Hamburg-Sudamerikanische Dampfshifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line)
Associated Container Transportation (Australia) Limited (Pace Line)

Synopsis: The proposed modification deletes Article 5.1 (k) and (l) and rewords (j). The proviso at the end of Article 16.4(b) is deleted. Article 5.3 is amended to provide that the Members may enter into Service Contracts in accordance with the provisions of Article 14. The Agreement also amends Article 13.1 pertaining to the filing of independent actions and now states that such filings will be effective no later than 10 calendar days after receipt of notice.

Agreement No.: 202–010286–025.

Title: South Europe/U.S.A. Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Container Line, A Division of Contship Containerlines Limited
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.
Jugolinija
Lykes Lines (Lykes Bros. Steamship Co., Inc.)
A.P. Moller-Maersk Line
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
P & O Containers (TFL) Ltd.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification revises the pool periods applicable to particular pool sections, and revises and clarifies the time periods applicable to the issuance of final statements by the Pool Administrator and the payment of penalties by member lines.

Agreement No.: 203–010999–007.

Title: Ecuador Discussion Agreement.

Parties:

United States Atlantic and Gulf/Ecuador Freight Association
Empresa Naviera Santa, S.A.
Compania Chilena de Navigacion Interoceania, S.A.
Gran Golfo Express

Synopsis: The proposed modification would add Naviera Consolidada S.A. as an independent carrier party and delete Gran Golfo Express, a joint service of Transportes Navieros Ecuatorianos and Naviera Consolidada S.A., as an independent carrier party. The parties have requested a shortened review period.

Agreement No.: 203–011275. Title: Australia/United States Discussion Agreement.

Parties:

Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line)
Associated Container Transportation (Australia) Ltd. (Pace Line)
Australia-New Zealand Direct Line

Synopsis: The proposed Agreement would permit the parties to discuss rates and other matters relating to the trade from Australia to the United States.

Agreement No.: 206–011276.

Title: United States/Southern and East Africa Interconference Agreement.

Parties:

United States/Southern Africa Conference
United States/East Africa Conference

Synopsis: The proposed Agreement would authorize the parties to meet, exchange information and discuss and reach consensus or agreement upon rates, charges, classification, rules, service items, freight forwarder compensation, practices and other terms and conditions of transport. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached.

By order of the Federal Maritime Commission.

Dated: March 21, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–6813 Filed 3–26–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Albany Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected

to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Albany Bancshares, Inc.* Albany, Illinois; to engage *de novo* in acting as an insurance agency for the activity of selling life, health, and annuity insurance pursuant to § 225.25(b)(8) (iii) of the Board's Regulation Y. These activities will be conducted in an area covering a radius of approximately 17 miles around Albany, Illinois, on the Illinois side of the Mississippi River.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation,* Little Rock, Arkansas; to engage *de novo* in providing data processing and data transmission services, facilities, data bases, or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6848 Filed 3-26-90; 8:45 am]

BILLING CODE 6210-01-M

Larry Brewer; Change in Bank Control Notices; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 10, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Larry Brewer,* Brewer Brothers, Inc., and Brewer Family Trust; to acquire an additional 13.96 percent of the voting shares of First Paragould Bankshares, Inc., Paragould, Arkansas, for a total of 25.10 percent, and thereby indirectly acquire First National Bank, Paragould, Arkansas, and Corning Bank, Corning, Arkansas.

Board of Governors of the Federal Reserve System, March 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6850 Filed 3-26-90; 8:45 am]

BILLING CODE 6210-01-M

First Sun Capital Corporation 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 immeidate 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, identifiying 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 April 16, 1990.

A. **Federal Reserve Bank of Richmond** (Fred L. Bagwell, Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Sun Capital Corporation,* Columbia, South Carolina; to acquire 100 percent of the voting shares of Kingsley Bank, Orange Park, Florida.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Financial Bancshares, Inc.,* St. Louis, Missouri; to acquire an additional 69.8 percent of the voting shares of First Bank of East Prairie, East Priairie, Missouri, for a total of 100 percent.

Board of Governors of the Federal Reserve System, March 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6849 Filed 3-26-90; 8:45 am]

BILLING CODE 6210-01-M

UniBanc Corp., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that

outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1990.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *UniBanc Corp.*, Trenton, Nebraska; and UniBanc Corp. Employee Stock Ownership Plan, Trenton, Nebraska; to become bank holding companies by acquiring up to 100 percent and 30.05 percent, respectively, of the voting shares of Thuman Corporation, Maywood, Nebraska, and thereby indirectly acquire Farmers State Bank, Maywood, Nebraska; and Treleco, Inc., Trenton, Nebraska, and thereby indirectly acquire State Bank of Trenton, Trenton, Nebraska.

In connection with this application, Applicants and Thuman Corporation propose to engage in general insurance activities in a town with a population of less than 5,000 (Maywood, Nebraska) pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. Thuman Corporation will engage directly in the activity, while UniBanc Corp. ESOP and UniBanc Corp. will do so indirectly through Thuman Corporation.

Board of Governors of the Federal Reserve System, March 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6851 Filed 3-26-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 891-0038]

Nippon Sheet Glass Company, Ltd., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the float glass manufacturers to repeal the challenged portion of the Float Glass Capacity Agreement. In addition, the consent agreement would prohibit respondents from entering into any agreement which has the purpose or effect of restraining competition by either limiting float glass manufacturing capacity in North America or restricting imports to North America.

DATES: Comments must be received on or before May 29, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Egan or Robert Doyle, Jr., FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (the "Commission"), having initiated an investigation of the proposed acquisition of certain stock or voting securities of Libbey-Owens-Ford Co. ("LOF"), a subsidiary of Pilkington plc ("Pilkington") by NSG Holding USA, Inc. ("NSG-USA"), a subsidiary of Nippon Sheet Glass Company, Ltd. ("Nippon"), pursuant to a Common Stock Purchase Agreement, and proposed respondents having been furnished with a copy of a draft complaint that, if issued by the Commission, would charge proposed respondents with violations of the Federal Trade Commission Act, and it now appearing that Nippon, NSG-USA, Pilkington and LOF are willing to enter into an agreement containing an order to cease and desist from certain acts:

It is hereby agreed by and between Nippon, NSG-USA, Pilkington and LOF, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Proposed respondent Nippon is a corporation organized under the laws of Japan, with its executive offices at 5-11, Doshomacho 3-chome, Chuo-Ku, Osaka, Japan.

2. Proposed respondent NSG-USA, a wholly owned subsidiary of proposed respondent Nippon, is a corporation organized and existing under the laws of Delaware, with its principal place of business at 1209 Orange Street, Wilmington, Delaware 19801.

3. Proposed respondent Pilkington is a corporation organized under the laws of England, with its executive offices at Prescot Road, St. Helens, Merseyside, England WA10 3TT.

4. Proposed respondent LOF, a wholly owned subsidiary of proposed respondent Pilkington, is a corporation organized and existing under the laws of Delaware, with its principal place of business at 811 Madison Avenue, Toledo, Ohio 43695.

5. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

6. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

7. This agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

9. This agreement contemplates that, if it is accepted by the Commission, and

if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue a complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents or to their counsel shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

10. Proposed respondents have read the order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

11. For purposes of securing compliance with the order contemplated hereby, each respondent agrees to designate an agent in the United States to accept service and that delivery by the U.S. Postal Service to it or such designated agent shall constitute service. By this agreement, each respondent agrees that its undersigned counsel is designated and shall serve as such agent for such service until the respondent notifies the Commission of a new designated agent.

Order

For the purposes of this Order the following definitions shall apply:

1. "Nippon" means respondent Nippon Sheet Glass Company, Ltd., as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to NSG–USA), successors, assigns, and the officers, employees, and agents of Nippon's divisions, subsidiaries, successors and assigns.

2. "NSG–USA" means respondent NSG Holding USA, Inc., as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees, and agents of NSG–USA's divisions, subsidiaries, successors and assigns.

3. "Pilkington" means respondent Pilkington plc, as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to LOF), successors, assigns, and the officers, employees and agents of Pilkington's divisions, subsidiaries, successors and assigns.

4. "LOF" means respondent Libbey-Owens-Ford Co., as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees and agents of LOF's divisions, subsidiaries, successors and assigns.

5. "Respondents" means Nippon, NSG–USA, Pilkington, and LOF.

6. "Float glass" means either clear or tinted flat glass manufactured by floating molten glass over a bed of molten material or materials.

7. "Capacity Agreement" means the Float Glass Capacity Agreement which is Exhibit E to the Common Stock Purchase Agreement between and among Respondents, dated May 21, 1989.

8. "ASEAN Agreement" means the ASEAN Float License Agreement between Nippon and Pilkington, dated August 8, 1983.

9. "North America" means the United States, Canada and Mexico.

I

It is ordered That respondent Nippon and respondent Pilkington, directly or indirectly, or through any corporate or other device, in or in connection with the offering for sale, sale or manufacture of float glass in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall cease and desist from entering into, cooperating in or carrying out any agreement, combination, conspiracy, understanding or planned common course of action with each other which has the purpose or effect of:

A. Prohibiting, restricting, or otherwise restraining the building, expanding, acquiring, reducing or otherwise limiting float glass manufacturing capacity in North America, provided that, nothing in this Order shall be construed to prohibit Nippon and Pilkington in connection with the operation of respondent LOF from jointly making decisions relating to the float glass manufacturing capacity of LOF; or

B. Prohibiting, restricting, or otherwise restraining the importation of float glass to North America, provided that, this Order shall not be construed to affect the ASEAN Agreement between Nippon and Pilkington.

II

It is further ordered, That respondents shall abrogate, delete and otherwise cease and desist from enforcing Paragraph 2(3) of the Capacity Agreement.

III

It is further ordered, That respondents shall, upon written request of respondent Nippon, license to Nippon technology sufficient to enable Nippon to manufacture and sell float glass in North America and to export such float glass in North America and to export such float glass to Japan. Such license shall be on terms and conditions and with the scope at least as favorable to Nippon as those contained in the ASEAN Agreement, provided that:

A. (a) Pilkington shall in such new license agreement be entitled to adjust the amount of license payments contained in such new license agreement from those contained in the ASEAN Agreement to account for inflation as measured by the change in the United States Consumer Price Index from August 1983 until the effective date of the new license; (2) Pilkington shall not be obligated to enter into any provision in such new license that conflicts with Article VIII ("Restriction on Manufacture of Subject Products in Mexico") of the Agreement between Pilkington and Fomento de Industra y Comercio S.A., dated March 29, 1965; and (3) Pilkington shall not be obligated in such new license to grant to Nippon geographic rights greater than those sufficient to enable Nippon to manufacture and sell float glass in North America and to export such float glass to Japan;

B. Nothing contained in this Order shall be: (1) Deemed to immunize or exempt from the antitrust laws or any law enforced by the Commission any licensing practice engaged in by Pilkington; (2) interpreted as prohibiting Pilkington in any respect from licensing its technology in any manner and upon any terms that it chooses, other than as specifically set forth in this Order; and (3) interpreted to mean that Nippon is or is not legally obligated to obtain a license from Pilkington prior to building float glass manufacturing capacity in North America.

IV

It is further ordered, That within thirty (30) days after the date this Order

becomes final, and at such times as the Commission or its staff may require, each respondent shall submit to the Commission a verified report setting forth in detail the manner and form in which it has complied with this Order.

V

It is further ordered, That for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request by the Commission or its staff and on reasonable notice to any respondent made to their principal offices, such respondent shall permit duly authorized representatives of the Commission:

A. Reasonable access during respondent's office hours, in the presence of counsel, to all books, ledgers, accounts, correspondents, memoranda, and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order, for inspection and copying; and

B. An opportunity, subject to respondent's reasonable convenience, to interview, in the presence of counsel, officers or employees of respondent regarding such matters.

VI

It is further ordered, That each respondent shall notify the Commission at least thirty (30) days prior to any change in respondent which may affect compliance with the obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nippon Sheet Glass Company, Ltd. ("Nippon"), Nippon's wholly owned subsidiary NSG Holding USA, Inc. ("NSG–USA") Pilkington plc ("Pilkington"), and Pilkington's wholly owned subsidiary Libbey-Owens-Ford Co. ("LOF").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that the Float Glass Capacity Agreement, which is an exhibit to the Common Stock Purchase Agreement between Nippon, NSG–USA, Pilkington and LOF dated May 21, 1989, violates section 5 of the Federal Trade Commission Act.

The proposed consent order requires Nippon, NSG-USA, Pilkington, and LOF to abrogate the portion of the Float Glass Capacity Agreement that prohibits Nippon and Pilkington from building or acquiring capacity for the production or fabrication of float glass except through LOF.

The proposed order also prohibits Nippon and Pilkington from entering into any agreement which has the purpose or effect of restraining completion by either limiting float glass manufacturing capacity in North America or restricting imports to North America. The order does not prohibit Nippon and Pilkington from jointly making decisions relating to a shared common ownership of LOF.

To ensure that there are no external, technology-related restrictions on Nippon's ability to manufacture float glass in North America, the proposed order provides that, upon Nippon's request, Pilkington shall license to Nippon technology sufficient to enable Nippon to manufacture float glass in North America and to sell that glass in North America and export it to Japan. The payment terms of such license would be at least as favorable to Nippon as an earlier license agreement between these companies (adjusted for inflation) and would not conflict with existing Pilkington license agreements. This order does not sanction any Pilkington licensing practices, nor does it indicate whether a license from Pilkington is necessary for Nippon legally to manufacture float glass in North America.

The proposed order requires that within thirty (30) days of the date the order becomes final respondents submit a report to the Commission verifying their compliance with the provisions of the order, and provides that additional compliance reports may be required.

The Commission anticipates that the effect of the proposed order will be to maintain the opportunity for unrestrained trade in the market for float glass in the United States.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Strenio, in Which Commissioner Azcuenaga Joins

Nippon Sheet Glass Company, Ltd., File No. 891 0088

I agree that there is reason to believe that the collateral agreement at issue is anticompetitive and, accordingly, voted in favor of accepting the proposed settlement for public comment. At the same time, the proposed settlement does not resolve any of the other competitive concerns raised by this acquisition. Indeed, I have reason to believe that Nippon Sheet Glass' proposed acquisition of 20 percent of the voting securities of Libbey-Owens-Ford Co., which is currently owned by Pilkington plc, is likely to substantially reduce competition in the float glass market. Accordingly, a Commission challenge to the acquisition—and not just to the collateral agreement—also would be in the public interest.

[FR Doc. 90–6902 Filed 3–26–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Cooperative Agreements for Communications Programs for the Prevention of Illegal Drug Use or the Illegal Use or Abuse of Alcohol

AGENCY: Office for Substance Abuse Prevention.

ACTION: Request for applications for cooperative agreements for communications programs for the prevention of illegal drug use or the illegal use or abuse of alcohol.

Introduction and Background

The Office for Substance Abuse Prevention (OSAP) was created by the Anti-Drug Abuse Act of 1986 to lead the Federal Government's efforts toward the prevention of illegal drug use or the illegal use or abuse of alcohol (hereafter referred to as "drug and alcohol abuse") among the Nation's citizens, with special emphasis on youth and families living in high-risk environments. In addition, as noted in the National Drug Control Strategy, Federal support for the development of anti-drug media

outreach and related activities is a high priority.

The goal of this program is to demonstrate communication-centered approaches to prevent drug and alcohol abuse among targeted populations. OSAP will implement the program by funding cooperative agreements for communications programs under the authority of Section 508b of the Public Health Service Act, as amended by Public Law 100–690.

Recent research has suggested that mass communications efforts can contribute to the reduction of drug and alcohol abuse, especially when linked with local organizations and resources in a coordinated program. Guidelines for such projects and specific component materials have been developed by a number of prominent researchers and organizations. Demand for specialized drug and alcohol information, about promising approaches for prevention and intervention, and about evaluations of such programs has increased dramatically, as has the need for specialized, well-tested materials for use in prevention and intervention programs. Similarily, communication networks linking key organizations in the field require improved methods and tools to access the latest available research knowledge and relevant materials. The purpose of this program announcement is to foster improved communication programs in order to increase the Nation's ability to reduce drug and alcohol abuse.

Awards for this purpose will be made as cooperative agreements, a type of assistance award which involves substantial participation by Federal staff in the conduct of the projects. Such involvement is needed in order to ensure consistency of communications messages with the policies of the national drug abuse prevention program of OSAP and HHS regulations, and to ensure that plans are adequate and appropriate for reaching the intended audience. Also, Federal staff provide technical assistance to help ensure that necessary specialized expertise is available to conduct the projects, and to facilitate coordination of these projects with other OSAP programs, as appropriate.

Program Goals and Purpose

This program is intended to develop demonstration communication programs for the prevention of drug and alcohol abuse. This announcement includes two types of projects: (1) Mass communication projects that reach targeted populations with specific prevention messages, and (2) communication tools and materials development projects that respond to highly specific needs of particular audiences. In either case, emphasis should be on high-risk youth or youth in high-risk environments. Innovation in approaches to reaching the intended audience is encouraged.

The purpose of the communications program is to:

A. Stimulate the development and evaluation of promising communications-based approaches to the prevention of drug and alcohol abuse;

B. Foster the development and use of communication tools and products that supplement or provide improved access to the knowledge base available to organizations working in the area of communications, resource centers and clearinghouses, and materials development;

C. Develop and evaluate approaches to assist communities in improving the overall message environment for the prevention and protection of those living in high-risk environments.

Examples of such projects include media campaigns directed at a specific target audience (e.g. anti-inhalant messages directed toward a particular Native American youth population, anti-marijuana and anti-heroin message, anti-"ice" (smokeable methamphetamine) messages directed toward urban and rural young adults); specialized product development (e.g. videotapes created by youth as part of a community-wide effort to reduce drug and alcohol abuse; preparation of a "how to" manual designed to help communities organize to reduce the number of alcohol and tobacco billboards, point-of-purchase displays, and underage sales); and specialized communication tools development (e.g. preparation of a unique database from a specialized collection of materials or development of a specialized electronic communications network to share unique information with other organizations).

Activities to be supported include the development, testing, dissemination and evaluation of communication campaigns and products. Such activities are likely to generate media messages and products such as television and radio programs, billboards and posters, publications, and related items. A major proportion of the overall effort is expected to be devoted to formative evaluation and the design and testing of specific messages and products for highly-specific target audiences.

Emphasis should be placed on collaborative efforts that link various organizations working with the targeted populations, that increase credibility and utility of messages by linking them with community organizations and resources, and that involve the particular target audience(s) in the development and evaluation of messages and materials. Creativity is encouraged.

Role of OSAP Staff

OSAP staff will participate in the development, review, and approval of plans to disseminate messages and products emanating from these awards. One or more OSAP staff collaborators will be assigned to work with each awardee.

As necessary, OSAP collaborating staff will provide or help the awardee obtain specialized technical assistance essential to the development and testing of messages and materials. Key areas for consultation include helping to ensure scientific accuracy of messages; consistency with public health principles and guidelines for message development; conformance with ADAMHA, PHS and HHS policies; adequate testing of message concepts among members of the target audiences; and coordination with gatekeepers who will have influence or responsibility for message dissemination and related matters. Consultation may involve participation in planning committees and review of scripts, pretesting, and message development plans and materials.

An OSAP project officer, who is not a collaborator, is responsible for monitoring the project and making recommendations to the Grants Management Officer on programmatic issues. This will include, but not be limited to, recommendations to proceed from development to production and dissemination stages of the project, review and acceptance of progress reports, and recommendations on level of funding.

Application Characteristics

Applications must be completed and contain all information needed for review. No additional material will be accepted later than the receipt date unless specifically requested by the executive secretary of the review committee.

Abstract: The narrative section of the application must be preceded by an abstract of approximately 35 single-spaced lines on a separate typewritten page. The abstract should clearly present the grant application in summary form, from a "who-what-when-how-where" point of view so that reviewers can see how the multiple

parts fit together to form a coherent whole.

The narrative section of the application (sections A–E) should be written in a manner that is self-explanatory to outside reviewers who are unfamiliar with prior related activities of the applicant. It should be succinct, well organized, may not exceed 25 single-spaced pages, and must contain all information necessary for reviewers to understand the proposed project. Applications exceeding the 25 page limit (on the narrative section) will not be accepted for review. Appendices may be attached for technical or specialized materials but may not be used merely to extend the narrative.

Table of Contents: The narrative section (A–E) of the application must address the following topics and be preceded by a table of contents identifying sections as follows:

A. Specific Aims

The applicant must specify goals and objectives for the proposed project and indicate how these relate to the goals stated in this program announcement. Project goals should be stated in clear terms and be related to the statement of the problem. Objectives should be stated in measurable terms and be related to changes the project will aim to achieve.

B. Background

The applicant must demonstrate an understanding of drug and alcohol abuse prevention, relevant to communications approaches. A conceptual framework or theoretical perspective should be established for the proposed project which may be based on a review of the literature, other related projects, scholarly information and/or research studies. This section must include a statement of the problem that demonstrates the specific need and how the chosen conceptual framework is appropriate.

C. Target Population/Community

The applicant must describe and profile the target population/community the proposed project is intended to reach (e.g. numbers, location, socioeconomic and psychographic characteristics, ethnic composition, access to specified populations and key intermediaries). This section should include information about the level of drug and alcohol abuse within the selected community and/or the target group the project intends to reach, either directly or indirectly.

D. Approach

The approach to be used in conducting the proposed project must be discussed clearly and with attention to detail. The following information must be provided:

1. A brief, clear statement of why the approach chosen is appropriate for the conceptual framework identified earlier (section B)

2. A description of the goals and objectives of the project, the methods proposed to accomplish the project, and how they will be implemented.

3. A description of the procedures planned and how they will be used to shape the development of the project. (This phase of program development is often referred to as formative evaluation. Its purpose is to assess the strengths and weaknesses of communication strategies, messages and materials, and make appropriate revisions before implementation.)

4. A description of how relevant community and other organizations will be involved, and how the target audience will be involved in message and/or product development and evaluation.

5. A plan, with milestones, demonstrating how each phase of the effort shall be measured to assure that the messages are scientifically accurate, appropriate for the target audience, and conform to public health principles; that the media chosen are related to the media habits of the audience; and that pretesting results are incorporated prior to pilot testing and final production. (Note: Timetables should take into account the need for OSAP approval of plans to proceed with production and/or dissemination of all publications and audiovisuals.)

E. Evaluation Plan

Projects must include process and outcome evaluation components. Applications shall include a description of the method(s) of evaluating the effect of the project on individuals, communities and/or organizations. However, the development of instruments to evaluate the project is totally up to the awardee.

The purpose of process evaluation is to document how the proposed interventions designed for this project were implemented. Process evaluation requires a system for tracking the activities and the participation in the project. It is important that measures of program performance be included. Examples include free media time and space generated by a campaign, numbers of persons exposed to the messages, materials disseminated, access time by users of a database, etc.

The purpose of outcome evaluation is to determine whether the implemented intervention had a discernable effect on the target population that could be attributed to the project. The methods that will be used to measure the outcome variables should be identified and a plan for collecting, processing and analyzing the data should be included. Examples of outcome measurements for projects of this type include knowledge and attitude changes, intent to use, short-term or intermediate behavior shifts such as calls to a toll-free telephone number or reductions in underage alcohol sales, etc.

It is suggested that 10 to 15 percent of the budget should be allocated to process and outcome evaluation activities. The amount should be determined by the program proposed. Efforts to utilize support and cost-sharing with universities or appropriate public or private research organizations for evaluation activities are encouraged but not required.

Ten additional pages may be used for sections F–J.

F. Project Management and Implementation Plan

The management and implementation plan must include a description of tasks to be performed, their phase, performance schedule, and their relationship to each other. This may include, as examples, rental and preparation of facilities, hiring of key staff, purchase or rental of equipment, data collection and analysis, and phasing to assure necessary government clearances prior to final production and dissemination consistent with the section entitled "Role of OSAP Staff." The accomplishment of these tasks should be related to project goals and objectives. The level of effort as measured by full-time equivalents or percentages for each task should also be shown, consistent with the budget section.

G. Resources and Budget

Describe the facilities, equipment, services and other resources (such as unique collection of material or a specialized knowledge base) available to carry out the project and specify their source (e.g. agency, organization, individual). Indicate the terms, conditions and timetables of availability of these resources. Indicate additional resources required and justify the budget requested.

Other Support

The following information must be provided in a specially-labeled appendix, "Resources/Other Support." "Other Support" refers to all current or pending support related to this application. Applicant organizations are reminded of the necessity to provide full and reliable information regarding "other support," i.e., all Federal and non-Federal active or pending support. Applicants should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS and could therefore lead to delay in the processing of the application. In signing the face page of the application, the authorized representative of the applicant organization certifies that the application information is accurate and complete.

For your organization and key organizations that are collaborating with you in this proposed project, list all currently active support and any applications/proposals pending review or funding that relate to the project. If none, state "none." For all active and pending support listed, also provide the following information:

(1) Source of support (including identifying number and title).

(2) Dates of entire project period.

(3) Annual direct costs supported/requested.

(4) Brief description of the project.

(5) Whether project overlaps, duplicates, or is being supplemented by the present application; delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

H. Project Staffing and Organization

1. *Organizational Structure.* A description of the organizational structure for the proposed project should be provided, and should clearly indicate the organizational relationships and responsibilities of the Project Director and key personnel for each project unit or activity. The responsibilities and composition of boards of supervisors, directors, trustees and/or advisors should be included, where applicable.

If the implementing organization is responsible to or receives program management direction from a State, regional, local, or other office or agency, this relationship should be clearly described, indicating the lines of responsibility.

2. *Staffing Pattern.* Include, as part of the application, biographical sketches for key staff (including evaluation staff) and consultants proposed for the project. Experience and/or training pertinent to the project should be highlighted. Curricula vitae should be included in an appropriately-labeled appendix.

I. Publications and Audiovisuals

For each publication and audiovisual planned, indicate the proposed title, describe briefly (up to 20 words), list estimated production costs with identification of total costs of production regardless of funding source (i.e., federal funds and/or non-federal funds), and anticipated schedule for production and dissemination.

J. Government Role

A statement to the effect that the applicant agrees to the participation of OSAP staff, as described in the section entitled "Role of OSAP Staff," should be included.

Eligibility

Applications may be submitted by public or private nonprofit or for-profit organizations such as universities, colleges, hospitals, community-based organizations, units of State or local governments, and eligible agencies of the Federal Government.

Letter of Intent

Organizations planning to submit an application in response to this cooperative agreement announcement are requested to submit a letter of intent to OSAP. Such notification is used by OSAP for purposes of review and program planning. The letter of intent should be no longer than one page and should succinctly indicate:

—The announcement number
—The name of the potential applicant organization
—The name of the proposed program director
—The overall scope of the proposed program

The letter of intent is requested 30 days before a receipt date. The letter should be directed to Salvatore Cianci, Ph.D., Director, Program Coordination and Review Unit, Office for Substance Abuse Prevention, 5600 Fishers Lane (Rockwall II), Rockville, Maryland 20857. The letter of intent is voluntary and does not obligate the person/organization to follow up with an official application, i.e., the letter of intent does not commit the organization to the submission of an application.

Application Receipt and Review Schedule

Initial receipt date	Initial review	Earliest start date
June 13, 1990	August 1990	September 1990.

Subsequent receipt and review schedule:

Receipt date	Initial review	Earliest start date
October 1, 1990 February 1, 1991	February 1991 July 1991	May 1991. September 1991.

Applications received after the June 13 and October 1, 1990 receipt dates are subject to assignment to the next review cycle or may be returned to the applicant. Application received after the February 1, 1991 receipt date are subject to be returned to the applicant.

Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered post marks shall not be acceptable as proof of timely mailing.

Availability of Funds

In FY 1990, it is estimated that approximately $2 million will be available to support grants under this program announcement. It is expected that individual funding needs will vary widely by type of project. Subsequently, program continuation will be subject to availability of funds. It is anticipated that funds will be available in the two project areas as follows, including direct and indirect costs:

Media Mass Communication Projects

—Approximately $1 million in FY 90, to support up to 5 grants

Communication Tools and Materials Development Projects

—Approximately $1 million in FY 90, to support up to 15 grants

Actual funding levels will depend upon the availability of funds and program priorities at the time of the award.

Application Procedures

Application kits (including the PHS 5161–1 application form; revised 3/89) with guidance for OSAP applications, are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), Post Office Box

2345, Rockville, Maryland 20852 (301) 468–2600.

The title of the announcement "Cooperative Agreements for Communications Programs for the Prevention of Illegal Drug Use and Illegal Use or Abuse of Alcohol" should be typed in Item 9 on the face page of the PHS 5161–1.

Applicants must submit one (1) original signed by an authorizing official and two (2) copies of the 5161–1. The copies must be unbound with no staples, paper clips, fasteners, or heavy or lightweight paper stock within the document itself. The application will be reproduced in order to provide sufficient copies for review. Do not include anything that cannot be photocopied using automatic processors. Do not attach or include anything stapled, folded, pasted, or in a size other than 8½ x 11" on white paper. Heavy or lightweight paper will clog the photocopy machine and could be destroyed by the machine. Only one side should have printing. Odd sized attachments of any kind will not be copied.

Application materials could accidentally get out of order when being reproduced, thus every sheet of the proposal must have a page number. It is requested that pages be numbered consecutively from Beginning to End (for example, page 1 for the cover page, page 2 for the Abstract, etc.) The appendices should be labeled and separated from the narrative and budget section, and the page numbers continued in the sequence. Appendix material should not be used to extend the narrative portions of the applications. Do not include excessive or over-sized material, e.g., posters. Do not use photo reduction or condense type closer than 15 characters per inch.

Applications must be complete and contain all information needed for review. No addenda will be accepted later unless specifically requested by the Executive Secretary of the review committee.

Applicants should return the signed original form 5161–1 and two permanent, legible copies of the completed application to:

OSAP Programs, Division of Research Grants, NIH, Room 240, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland 20892.*

Executive Order 12372 (Intergovernmental Review)

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100, are applicable to this program. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of all SPOCs is enclosed with the application kit. SPOC comments should be sent, no later than 60 days after the relevant receipt date, to: Dr. Salvatore Cianci, Director, Program Coordination & Review Unit, 880 Rockwall II, 5600 Fishers Lane, Rockville, MD 20857.

OSAP does not guarantee to accommodate or explain comments to the SPOC that are received after the 60-day period.

The application must include a copy of a letter sent to the Drug and/or Alcohol Abuse "Single State Agency" (SSA) briefly describing the grant proposal.

Review Process

Applications submitted in response to this announcement will be reviewed by an Initial Review Group in accordance with ADAMHA/PHS peer review procedures for cooperative agreements. OSAP staff will screen applications upon receipt and return those that are judged to be incomplete, non-responsive to this announcement or non-conforming (e.g., exceed the page limits, unsigned or not on PHS form 5161–1). Returned applications will *not* be accepted for the initial review schedule but may be re-submitted after appropriate changes for the next receipt/review cycle, if the review and proposed implementation schedules are compatible.

Applications may also be subject to a "triage" review by predominantly non-Federal experts to determine their competitiveness based on an assessment of the evaluation component. Those applications judged to be noncompetitive will be removed from further review considerations. OSAP will advise the project director and the institutional business official of the action. Applications judged to be conforming, responsive, and competitive will be reviewed for technical merit in accord with the PHS and ADAMHA policies for peer review. The review group(s) will be composed primarily of non-Federal experts. Notification of the review outcome will be sent to the applicant upon completion of the initial review. Applications may receive a second level of review by the Advisory Committee on Substance Abuse Prevention, whose review may be based on policy considerations, as well as technical merit.

Confidentiality

Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR Part 2). These regulations are applicable to any information about alcohol and other drug abuse patients obtained by a "program" (42 CFR 2.11) if the program is federally assisted in any manner [42 CFR 2.12(b)]. This means that all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR part 2.

Review Criteria

Criteria for review of applications will include the following:

- Consistency of approach with state-of-the-art practices and relevant knowledge and theories in prevention with special attention to communications;
- The extent to which the applicant demonstrates an understanding of the drug and alcohol abuse the project is to address, especially the cultural factors involved and the needs of the particular target audience;
- The extent to which the project is consistent with the goals of this cooperative agreement;
- Potential regional or national significance of the project for the field of drug and alcohol problem prevention;
- Clarity and appropriateness of overall objectives, aims, and goals of the project;
- Appropriateness and feasibility of the proposed evaluation component;
- Qualifications and experience of project staff, principal director, and other key personnel;
- Participation of appropriate community and professional organizations, and evidence of support and specific commitments from relevant local groups and individuals to be involved in the project;
- Appropriateness of proposed facilities, resources, budget, and organizational plan necessary to complete the project; and,
- Appropriateness of phase-in plans and milestones.

Award Criteria

Applications will be considered for funding on the basis of overall technical merit of the project as determined by the review process, significance of the proposed project in terms of developing an approach with applicability elsewhere, OSAP program needs and balance, geographical distribution, and availability of funds.

*if express or overnight carrier is used, use Zip Code 20816

All applications proposing to develop audiovisuals, publications, or public broadcasts that have potential to educate, persuade, and inform the public must be approved by the Office of the Assistant Secretary for Public Affairs (OASPA) before awards are made. The OSAP Grants Management Officer will arrange for all such clearances.

Terms and Conditions of Support

Grants must be administered in accordance with the *PHS Grants Policy Statement* (Revised January 1, 1987).

Federal regulations at title 45 CFR parts 74 and 92, "generic requirements concerning the administration of grants," are applicable to these awards.

Grant funds may be used only for expenses clearly related and necessary to carry out the approved activities, including both direct costs which can be specifically identified with the project and allowable indirect costs. In order for grantees, sub-grantees and/or contractor organizations to recover those allowable indirect costs of a project, it may be necessary to negotiate and establish an indirect cost rate. While for-profit organizations are eligible to apply, they may not receive a profit fee. Grant funds cannot be used to supplant current funding for existing activities.

Allowable items of expenditure for which grant support may be requested include:

- salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- travel directly related to carrying out service activities under the approved project;
- supplies, communications, and rental of equipment and space directly related to approved project activities;
- contracts for performance of activities under the approved project; and
- other such items necessary to support approved project activities.

Grant Product Ownership

All products developed with these grant funds (with the exception of publications in scientific journals) must be published in the public domain and may not be copyrighted, unless prior approval is obtained from the Grants Management Officer. In addition, such products must prominently state: "This document is in the public domain, is not copyrighted and may be duplicated and used without prior approval." Grantees are strongly encouraged to make such products widely available.

Products will include an acknowledgment of PHS support, however, a disclaimer should be included to the effect that government support does not necessarily imply endorsement. Journal articles and similar publications may include OSAP staff as co-authors, consistent with their role in the project. Publications involving OSAP staff require internal clearances.

Period of Support

Support may be requested for an initial period of up to three years. Annual awards will be made subject to continued availability of funds and progress achieved.

Contacts for Additional Information

Questions concerning program issues may be directed to:

Robert W. Denniston, Director, Division of Communication Programs
or
Judith E. Funkhouser, Deputy Director, Division of Communication Programs
at
Office for Substance Abuse Prevention, 9C03 Rockwall II, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0373.

Questions regarding grants management issues may be directed to: Marilyn Morgan, OSAP Grants Management Officer, 655 Rockwall II, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3958.

References

1. *Flay, B.R. and Burton, D., "Effective Mass Communication Campaigns for Public Health" Paper presented at *Mass Communication and Health: Complexities and Conflicts*, Rancho Mirage, CA, September 1988.

2. *National Cancer Institute, *Making Health Communications Work—A Planner's Guide*, Bethesda, MD: US Department of Health & Human Services, National Institutes of Health, 1989.

3. Rogers, E.M., and Storey, J.D., "Communication Campaigns." In: *Handbook of Communication Science*, E. Berger and S. Chafee, (Eds). Beverly Hills: Sage Publications, 1987.

4. *Wallack, L.W., "Mass Media and Health Promotion: The Promise, The Problem, The Challenge" Paper presented at *Mass Communication and Health: Complexities and Conflicts*, Rancho Mirage, CA, September 1988.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Public Law 96–511, OMB Approval Number 0937–0189.

The Catalog of Federal Domestic Assistance number for this program is 13.901.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90–7052 Filed 3–26–90; 8:45 am]

BILLING CODE 4160–20–M

*Copy available from National Clearinghouse for Alcohol & Drug Information, P.O. Box 2345, Rockville, MD 20852; (301) 468–2600.

Centers for Disease Control

Health Aspects of Emergency Response Planning: Meeting

The Center for Environmental Health and Injury Control (CEHIC) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Health Aspects of Emergency Response Planning.

Place: Terrace Garden Inn, 3405 Lenox Road, NE., Atlanta, Georgia 30329, (404) 261–9250.

Time and Date: 9 a.m.–5 p.m., Tuesday, May 1, 1990.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Matters To Be Discussed: On March 10, 1987, CEHIC held a one-day meeting in Atlanta to hear from the principal elected officials in communities nearest the locations where lethal chemical munitions or agents are stored. The focus of the meeting was community preparedness to respond in the unlikely event there were a release of agent of sufficient size to endanger citizens outside the military installation. CEHIC has planned a second meeting for principal elected officials in communities nearest the locations where lethal chemical munitions or agents are stored. The purpose of this meeting is to ask for their perceptions of how those efforts are progressing and what directions the effort should follow in the future.

CONTACT PERSON FOR MORE INFORMATION: Additional information concerning the meeting may be obtained from Linda Anderson, Chief, Special Programs Group, CEHIC, CDC, Mailstop F29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephones: FTS 236–4595; Commercial (404) 488–4595.

Dated: March 21, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 90–6854 Filed 3–26–90; 8:45 am]

BILLING CODE 4160–18–M

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Review of Draft NIOSH Medical Screening Recommendations; Scientific Peer Review Meeting

Name: Review of Draft NIOSH Medical Screening Recommendations.

Time and Date: 9 a.m.–4 p.m., April 11–12, 1990.

Place: Omni Netherland Hotel, Salons H and I, 5th and Race Streets, Cincinnati, Ohio 45202.

Status: Open to the public, limited only by the space available.

Purpose: To review and discuss medical screening principles and recommendations in the draft NIOSH Medical Screening Recommendations.

FOR FURTHER INFORMATION CONTACT: Interested parties who wish to attend the meeting should contact Karen Dragon, Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226, telephone: (513) 533–8302 or FTS 684–8302.

For further technical information regarding the review, contact Dan C. Middleton, M.D., Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C–31, Cincinnati, Ohio 45226, telephone (513) 533–8313 or FTS 684–8313.

Dated: March 21, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–6856 Filed 3–26–90; 8:45 am]

BILLING CODE 4160–19–M

Interagency Committee on Smoking and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Interagency Committee on Smoking and Health.

Time and Date: 9 a.m.–4 p.m., May 16, 1990.

Place: Hubert H. Humphrey Building Auditorium, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by space available.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health on the: (a) Coordination of all research and education programs and other activities within the Department and with other Federal, State, local, and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, Federal agencies, and State and local public health agencies with respect to smoking and health activities.

Matters to be Discussed: The agenda will include a discussion on the issue of preventing the sale of tobacco products to minors.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from John Bagrosky, Executive Secretary, Interagency Committee on Smoking and Health, Center for Chronic Disease Prevention and Health Promotion, CDC, Park Building, room 1–16, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301/443–1575.

Dated: March 21, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 90–6855 Filed 3–26–90; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Final Funding Priorities, Preferences, and Definition of Community-Based Program, for the Health Careers Opportunity Program

The Health Resources and Services Administration announces the final funding priorities and preferences and definition of "Community-Based Program" for the Health Careers Opportunity Program (HCOP) grants for Fiscal Year (FY) 1990 under the authority of section 787 of the Public Health Service Act, as amended by Public Law 100–607.

Section 787 authorizes the Secretary to make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools. Assistance authorized by the section includes: recruitment, preliminary education, facilitating entry and retention in health and allied health professions schools, and counseling and advice on financial aid.

The statute requires that of the amounts appropriated for any fiscal year, 20 percent must be obligated for stipends to disadvantaged individuals of exceptional financial need who are students at schools of medicine, osteopathic medicine, or dentistry, 10 percent must be obligated to community-based programs and 70 percent must be obligated for grants or contracts to institutions of higher education. Not more than 5 percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

Public Law 100–607 requires the Secretary to give priority in funding to the following schools, beginning in fiscal year 1992:

(1) A school which previously received an HCOP grant and increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 by the end of three years from the date of the award of the HCOP grant; and

(2) A school which had not previously received an HCOP grant that increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base 1987, over any period of time.

To receive HCOP support, applicants must meet the requirements of the program regulations specified in 42 CFR part 57, subpart S.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The degree to which the proposed project adequately provides for the requirements in the program regulations;

(b) The number and types of individuals who can be expected to benefit from the project;

(c) The administrative and management ability of the applicant to carry out the proposed project in a cost effective manner;

(d) The adequacy of the staff and faculty;

(e) The soundness of the budget; and

(f) The potential of the project to continue without further support under this program.

Proposed funding priorities and preferences were published for public comment in the **Federal Register** of August 17, 1989 (54 FR 33970). As indicated in the original notice, an institution may apply for a HCOP grant without requesting either a funding

priority or a funding preference and still remain competitive to receive a grant.

The Department received seven responses to its proposals during the 30-day comment period. Four responses were from schools and three were from professional organizations representing medical, dental, and osteopathic schools. The Department has finalized the funding priorities and preferences, as proposed. The comments and the Department's responses are summarized below.

One respondent opposed the proposed funding priority for applicants who can document over the past 3-year period a 10 percent increase in first-year enrollees who are disadvantaged. The respondent believed that using an absolute number is unrealistic, particularly for schools with overall declining enrollments.

The Department believes that this phase-in procedure will assist schools during the 3-year period following the award of a grant to attain the 20 percent increase in first-year enrollments of students from disadvantaged backgrounds required for the funding priority beginning in FY 1992. Therefore, this funding priority has been retained as proposed.

One respondent objected to seven as the minimum number of students in a cohort for purposes of qualifying for a funding preference based on preparation and entry of disadvantaged students into a health professions school. The respondent contended that it may be difficult to identify seven students who meet the requirements outlined in the preference and who are interested in the program. Another respondent suggested that to be cost-effective, the cohort should be comprised of at least 15–20 students and that each student should receive an initial small HCOP stipend and request a student loan as support for the remainder of the year.

The Department continues to believe that seven is a reasonable number of students to require as a minimum in the cohort, but notes that schools are not prohibited from selecting more than the minimum number of students. The Department does not believe it will be difficult for schools to identify seven students who meet the requirements and who are interested in the program, particularly in geographic areas with a high concentration of disadvantaged students. The Department is concerned that a cohort of less than seven students may not result in a cost-effective training program.

With respect to student financial assistance, the Department notes that disadvantaged students in health professions education already have a higher than average debt burden. The Department believes it is important to maintain the availability of stipend support at a level sufficient to encourage disadvantaged students to pursue opportunities for a health professions career while helping to keep debt burden to a minimum.

Three respondents opposed the criterion that the host school accept for enrollment in the first year of its health professions program members of the cohort that successfully complete the program.

The Department believes that acceptance of program participants by the host school demonstrates the school's concrete commitment to increasing the percentage of disadvantaged students with access to a health professions career. Therefore, this preference has not been revised.

One respondent suggested that the number of minority students in a school might be used as a means of calculating the number of disadvantaged students at the school.

The Department advises that the number of minority students is not the same as the number of disadvantaged students. An individual from a disadvantaged background means a person who: (a) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health profession; or (b) comes from a family with an annual income below a level based on low-income thresholds according to family size, published by the U.S. Bureau of the Census, and adjusted annually for changes in the Consumer Price Index, and by the Secretary for use in health professions programs.

One respondent suggested that the Department change "community-based program" to "community-based organization" for purposes of the 10 percent set aside of funds. The Department, however, is limited by the statutory language which specifically states a "community-based program."

Another respondent recommended revising the definition of "community-based program" to require that an applicant have a governing board with substantial minority membership and an established record of service to racial and ethnic communities.

The Department has not accepted this comment since it believes that the institution should determine the composition of its governing board and review its appropriateness as a part of an ongoing evaluation process.

One respondent requested that all programs leading to a degree in respiratory therapy, including associate degree programs, be included in the priority and preference areas since the majority of respiratory programs are at the associate degree level.

The Department continues to believe funding priorities and preferences should be directed to the baccalaureate level and above for respiratory therapy and other allied health professions since there is a greater shortage of practitioners from disadvantaged backgrounds at these levels in the allied health disciplines. Additionally, with limited funding, it is important to target HCOP grants to increase access for disadvantaged students to the graduate level allied health professions.

The Department would also re-emphasize that providing priority and preference in funding does not preclude an applicant from competing favorably for an HCOP grant in a non-priority or non-preference area.

The following funding priorities and preferences will be taken into consideration in distributing grant awards to approved HCOP applicants for FY 1990.

Final Funding Priorities for Fiscal Year 1990

1. A funding priority will be given to HCOP applications from health professions schools and from allied health training centers for baccalaureate or higher level programs in physical therapy, physician assistant, respiratory therapy, medical technology and/or occupational therapy that have a disadvantaged student enrollment of 35 percent or more; or can document (over the past 3-year period) a 10 percent increase in the number of first-year enrollees who are disadvantaged; or can document a 90 percent retention rate of disadvantaged students of the most recent graduating class.

2. A funding priority will be given to applicant educational institutions that can document that at least 60 percent of the disadvantaged prehealth professions students from their school, who applied over the past 3 years to a health or allied health professions school, were enrolled in such schools.

Final Funding Preferences for Fiscal Year 1990

A. A health professions school may request consideration for a funding preference if—

1. Either the applicant health professions school or an undergraduate school with which it has a formal arrangement:

a. Identifies and selects a cohort of seven or more disadvantaged students that have completed an undergraduate prehealth professions program and applied but were not accepted into a health professions school, or made a late decision to enter a new health professions school, for participation in the program; and

b. Provides the selected student cohort with one calendar year (including the initial 6 to 8 week summer program) of rigorous post-baccalaureate (undergraduate and/or professional) level science and other appropriate educational experiences to prepare the students for entry into the applicant health professions school; and

2. The applicant health professions school:

a. Accepts for enrollment in the first year of its health professions school class, upon entry into the post-baccalaureate program, members of the cohort who successfully complete the program; or assures enrollment, at the election of the student, at another health professions school; and

b. Provides members of the cohort and other disadvantaged enrollees retention services including a 6 to 8 week prematriculation summer program to ease their transition into the health professions school curriculum.

Stipends would be available through the grant for the targeted students during their summer programs and undergraduate academic year participation.

B. An allied health training center may request consideration for a funding preference if—

1. Either the applicant allied health training center or an undergraduate school offering pre-allied health preparation with which the center has a formal arrangement:

a. Identifies and selects a cohort of five or more disadvantaged students for participation in the program who have completed an undergraduate degree with a significant science focus and made a late decision to enter an allied health professions school and are in pursuit of a baccalaureate level degree in physical therapy, physician assistant, respiratory therapy, medical technology or occupational therapy; and

b. Provides the selected student cohort with one calendar year (including an initial 6 to 8 week summer program) of rigorous science and other educational experiences (e.g., allied health basic science, and quantitative and reading skills), to prepare them for entry at the end of that year into one of the above named baccalaureate level training programs of the applicant allied health training center; and

2. The applicant allied health training center:

a. Accepts for enrollment in the first-year class of one of the specified baccalaureate level training programs of the applicant allied health training center, upon entry into the preprofessional phase, members of the cohort who complete the program; or assures enrollment, at the election of the student, at another health professions school; and

b. Provides members of the cohort and other disadvantaged enrollees with retention services including a 6 to 8 week prematriculation summer program to ease the transition into the specified allied health professions school curriculum.

The definition as proposed will be retained as follows:

"Community-based program" means a program whose organizational headquarters is located in and which primarily serves: A Metropolitan Statistical Area, as designated by the Office of Management and Budget; a Bureau of Economic Analysis, U.S. Department of Commerce designated nonmetropolitan economic area; a county; or Indian tribe(s) as defined in 43 CFR 36.102(c), i.e., an Indian tribe, band, nation, rancheria, Pueblo, colony or community, including an Alaska Native Village or regional or village corporation.

This program is listed at 13.822 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: March 20, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-6811 Filed 3-26-90; 8:45 am]

BILLING CODE 4160-15-M

"Low Income Levels" for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low income family" for the purpose of providing training for individuals from disadvantaged backgrounds under various health professions and nursing programs included in titles VII and VIII of the Public Health Services Act (the Act).

The Department periodically publishes in the **Federal Register** low income levels used by the Public Health Service for grants and cooperative agreements to institutions providing training for individuals from disadvantaged backgrounds. A "low income level' is one of the factors taken into consideration to determine if an individual qualifies as a disadvantaged student for purposes of health professions and nursing programs.

The programs that use "low income levels" as one of the factors in determining disadvantaged backgrounds include the Health Careers Opportunity Program (section 787 of the Act), the Program of Financial Aid for Disadvantaged Health Professions Students (section 787(b)), the Scholarships for the Undergraduate Education of Professional Nurses Grant program (section 843), and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds (section 827). Other factors used in determining "disadvantaged backgrounds" are included in individual program regulations and guidelines.

Health Careers Opportunity Program (HCOP), Section 787

Awards grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, podiatric medicine, allied health, chiropractic and public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities that assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools.

Financial Aid for Disadvantaged Health Professions Students (FADHPS), Section 787(b)

Awards grants to accredited schools of medicine, osteopathic medicine, and dentistry to provide financial assistance, without a service or financial obligation, to individuals from disadvantaged backgrounds who are of exceptional financial need, to help pay for their health professions education.

Scholarships for the Undergraduate Education of Professional Nurses (SUEPN), Section 843

Awards grants to accredited schools of nursing to provide financial assistance, with a service obligation, for tuition and fees to individuals who are enrolled as undergraduate nursing students in diploma, associate, or baccalaureate degree programs, or in programs of nursing education leading to a first degree in professional nursing and who are in financial need with respect to attending these schools. Schools must give preference in

awarding scholarships to individuals from disadvantaged backgrounds.

Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds, Section 827

Awards grants to accredited schools of nursing and other public or nonprofit private entities to meet costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

The following income figures were taken from low income levels, published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to health professions and nursing grant programs which support training for individuals from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1989.

Size of Parents Family [1]	Income Level [2]
1	$8,300
2	10,800
3	12,800
4	16,400
5	19,400
6 or more	21,800

[1] Includes only dependents listed on Federal income tax forms.
[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1989.

Dated: March 20, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-6810 Filed 3-26-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3047]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reducton Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 16, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Minimum Property Standards-Request for Local Code Review.

Office: Housing.

Description of the Ned For the Information and Its Proposed Use: The information will be used to determine if local codes are comparable to one of the model codes. If the local code has been previously approved, the information will determine if there have been any changes.

Form Number: On Occasion.

Respondents: Businesses or Other For-Profit and Small Businessess or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	+	Frequency of response	+	Hours per response	=	Burden hours
Annual review	1,350		1		8		10,800
Recordkeeping	1,350		1		1		1,350

Total Estimated Burden Hours: 12,150.

Status: Extension.

Contact: Henry Omson, HUD, (202) 755–5798, John Allison, OMB, (202) 395–6880.

Dated: March 16, 1990.

[FR Doc. 90–6815 Filed 3–26–90; 8:45 am]

BILLING CODE 4210–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31607]

P&LE Acquisition Corp.—Acquisition and Operation Exemption—Assets of the Pittsburgh and Lake Erie Railroad Co.

P&LE Acquisition Corp. (Purchaser), a non-carrier, has filed a notice of exemption to: (1) Acquire (by purchase) and operate approximately 146.6 miles of rail line owned by The Pittsburgh and Lake Erie Railroad Company (P&LE); (2) acquire and operate approximately 136.8 miles of incidental trackage rights over rail line owned by Norfolk and Western Railway Company (N&W); and (3) acquire and operate aproximately 86.5 miles of incidental trackage rights over rail line owned by Consolidated Rail Corp. (Conrail). The properties include the following lines and trackage rights in Pennsylvania, Ohio, and New York:

Lines Owned by P&LE (146.6 route miles): Pittsburgh, PA (MP 0.0) to Youngstown, OH (MP 63.9) (63.9 route miles); Pittsburgh, PA (MP 0.0) to Sinns, PA (MP 17.8) (17.8 route miles); McKeesport, PA (MP 15.3) to Brownsville, PA (MP 53.9) (38.6 route miles); the Ohio River Branch (MPs not stated) (4.2 route miles); the New Castle Branch (MPs not stated) (3.1 route miles); the Koppel Branch (MPs not stated) (1.7 route miles); Lake Erie & Eastern R.R. (MPs not stated) (9.0 route miles); and Mahoning State Line R.R. (MPs not stated) (8.3 route miles).

Assignment of P&LE Trackage Rights Over N&W: Geneva, OH (MP 138.3) to Buffalo, NY (MP 1.5) (136.8 route miles).

Assignment of P&LE Trackage Rights Over Conrail (86.5 route miles): Youngstown, OH (MP 58.3) to Ashtabula Harbor, OH (MP 0.0) (60.6 route miles); [1] and Youngstown, OH to Shenango, PA (MP 58.3 to MP 57.6; MP 68.2 to MP 87.9; and MP 130.8 to MP 136.3) (25.9 route miles).[2]

The transaction was expected to be consummated on or shortly after March 21, 1990.

Comments must be filed with the Commission and served on Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036–2661.

Purchaser shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[3]

This notice is filed under 49 CFR 1150.31 and 1150.35. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

On March 6, 1990, the Railway Labor Executives' Association and the United Transportation Union filed a petition seeking: (1) Rejection of the notice of exemption filed by purchaser; (2) alternatively, a stay of the exemption; and (3) alternatively, the imposition of labor protective arrangements. On March 13, 1990, purchaser replied. On March 19, 1990, the Commission, meeting in public conference, voted not to reject the notice of exemption and not to stay the exemption, but to impose certain labor protective conditions. A summary written decision reflecting the Commission's vote was served on March 21, 1990. A more detailed follow-up written decision, expanding on the summary decision, will be issued shortly.

Decided: March 21, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–6887 Filed 3–26–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–303 (Sub–No. 3X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Wood County, Wisconsin

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by Wisconsin Central Ltd. of 5.95 miles of rail line in Wood County, WI, subject to standard labor protective conditions, an environmental condition, and a historic preservation condition.

DATES: Provided no formal expressions of intent to file an offer of financial assistance are received, this exemption will be effective on April 11, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 6, 1990, and petitions for reconsideration must be filed April 23, 1990. Requests for a public use condition must be filed by April 6, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB–303 (Sub-No. 3X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Petitioner's representative: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, Suite 2400, Chicago, IL 60601, (312) 819–4670

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

Decided: March 19, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–6888 Filed 3–26–90; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3515, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington,

[1] Milesposts do not accurately reflect route-miles on the Youngstown-to-Ashtabula Harbor line.

[2] The trackage rights from Youngstown to Shenango go over three sets of milepost markers.

[3] Purchaser certifies that it has identified to the appropriate State Historic Preservation Officers all sites and structures 50 years old and older that will be transferred as a result of this transaction.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DC., on April 26, 1990, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion of future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 22, 1990.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 90–6928 Filed 3–26–90; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Lodging Final Judgment by Consent U.S. et al-v-Sharon Steel Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 15, 1990 a proposed consent decree in *United States et al.* v. *Sharon Steel Corporation,* Civil Action No. 87–1295, was lodged with the United States District Court for the Western District of Pennsylvania.

The complaint filed by the United States in June 1987 pursuant to section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), sought injunctive relief and civil penalties for alleged violations by Sharon Steel Corporation of its National Pollution Discharge Elimination System ("NPDES") permits for discharges of wastewater into the Shenango River from its steel manufacturing facility located in Farrell, Pennsylvania. The Commonwealth of Pennsylvania intervened as a plaintiff shortly after the suit was filed.

The proposed consent decree requires Sharon Steel Corporation to achieve compliance with its NPDES permit pursuant to a compliance schedule set forth in the Consent Decree and requires payment by Sharon Steel Corporation of civil penalties for alleged violations in the amount of $300,000 to the United States and $200,000 to the Commonwealth of Pennsylvania.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC., 20530, and should refer to *United States* v. *Sharon Steel Corporation,* Civil Action No. 87–1295. DOJ Ref. No. 90–5–1–1–2668. The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Pennsyvania, 633 USPO & Courthouse, 7th and Grant Street, Pittsburgh, Pennsylvania. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC., 20044. When requesting a copy, please present or enclose a check in the amount of $3.10 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–6852 Filed 3–26–90; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Study of Magnesium Corrosion; International Magnesium Development Corporation

Notice is hereby given that, on February 23, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), International Magnesium Development Corporation ("IMDC") filed notification simultaneously with the Attorney General and the Federal Trade Commission of a project studying the formation and nature of the corrosion of magnesium. The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified conditions. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture and its general areas of planned activity are given below.

The parties to this agreement are:

International Magnesium Development Corporation
International Magnesium Association
Alcan Aluminum SA
Dynacast, Inc.
E.S.M. II, Inc.
Eckart-Werke
Electrolux Motor AB
Fansteel/Wellman Dynamics Co.
Alcan (Bermuda) Ltd.
Allied Corporation
Aluma GmbH
Aluminum Company of America
Amalgamet Canada, Ltd.
American Tank & Fabricating
Anglo American Corporation of South Africa, Ltd.
Anthon B. Nilsen
Bechtel Corporation
Brasmag
Britnet Limited
Charles River Associates
Chemetals Corporation
Chicago White Metal Casting
Chicago Magnesium Casting
Contech
Del Mar Die Casting Co.
Di-Tec Mold Corporation
Diemakers Incorporated
Dow Chemical Company
Dow Chemical Company (Texas Division)
Magnesium Elektron, Inc.
Magnesium Products Limited
Magnesium Company of Canada Ltd.
Magnesiumgesellschaft
Magnohrom
Massachusetts Institute of Technology
Metaleurip Handel GmbH
Mimeta, S.A.
Montangesellschaft GmbH
Morimura Brothers
Non Ferrum Metallpulver
Noranda
Norsk Hydro a.s.
Norsk Hydro Canada Inc.
Nother Diecast Corporation
Northwest Alloys, Inc.
Oregon Metallurgical
Frech USA Inc.
Frontier Foundries-AMP Div.
Garfield Alloys, Inc.
Haley Industries Ltd.
Harzer Dolomitwerke GmbH
Hitchcock Industries, Inc.
Honda R&D Co., Ltd.
Honjo Chemical Corporation
IDRA U.S.A., Inc.
IMCO Reycling, Inc.
Japan Metals & Chemicals Co., Ltd.
Japan Light Metal Association
Kaiser Chemicals
L-Bar Resources
Laukoetter GmbH
Lite Metals Company
Lunt Manufacturing Co., Inc.
Magnesium Services Limited
Magnesium Elektron Limited
Magnesium Corporation of America
Osaka Titanium Co., Ltd.
Otto Fuchs Metallwerke
Pechiney Electrometallurgie
Quality Castings Company
Queensland Metals Corp., N.L.
Remacor
Rossborough Supply Co.

Rossborough Manufacturing Co.
Schwegman & Associates
Societe Italiano per il Magnesio
Spartan Aluminum Products, Inc.
Spectrulite Consortium, Inc.
Timminco Metals
UBE Industries, Ltd.
Yankee Magcast Co., Inc.

The nature and objective of the joint venture is the investigation and evaluation of the formation and nature of the corrosion of magnesium and consequent process development to enhance magnesium corrosion resistance.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 90-6872 Filed 3-26-90; 8:45 am]
BILLING CODE 4410-01-M

"Wet Welding at Greater Depths"; Southwest Research Institute

Notice is hereby given that, on March 1, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its cooperative research project entitled "Wet Welding At Greater Depths." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under the specified circumstances. Specifically, the SwRI advised that the original period of performance of the cooperative research project was to be approximately 12 months. The parties to the cooperative research project have agreed to a four month extension. Additionally, due to the results of technical work performed under the cooperative research project, the parties have agreed to an adjustment of the technical scope of work though the overall planned research activities will remain the same. Except for the changes noted herein no other changes have been made in either the planned research activities or in the membership in the group research project except that Sun Exploration and Production Company, an original participant, has changed its name to Oryx Energy Company.

On January 3, 1989, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 13, 1989, 54 FR 10457.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 90-6873 Filed 3-26-90; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-116]

Robert E. Detrich, D.D.S.; Revocation of Registration

On November 10, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert E. Detrich, D.D.S. (Respondent), proposing to revoke Respondent's DEA registration AD7409534, and deny Respondent's May 4, 1988 application for renewal of his registration, as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the registration should be revoked based on Respondent's conviction in the United States District Court for the Eastern District of New York of illegal importation of heroin in violation of 21 U.S.C. 952(a), 960(a)(1), and 18 U.S.C. 2, felonies relating to controlled substances.

A hearing was held on May 10, 1989 in Washington, DC. Respondent appeared *pro se* and testified in his own behalf. After considering posthearing briefs, the administrative law judge issued his opinion, and recommended findings of fact, conclusions of law and decision on October 12, 1989. Respondent filed exceptions to the administrative law judge's opinion which were answered by the Government. On January 26, 1990, the administrative law judge transmitted the record of these proceedings, including Respondent's exceptions, to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent is a dentist practicing in Harrisonburg, Virginia. He is registered with the DEA as a practitioner in Schedules II-V. On July 13, 1987, Respondent returned from a trip to India. While going through customs, Inspectors searched his luggage and found heroin in the lining of a coat. The heroin weighed approximately 155 grams.

Respondent was arrested and charged with importation of a controlled substance (heroin), conspiracy to distribute and process heroin and possession of heroin with intent to distribute. On December 7, 1988, a jury found Respondent guilty of the importation charge. He was acquitted of the other two charges. On appeal, Respondent's conviction was reversed by the United States Court of Appeals for the Second Circuit, which held that certain proffered evidence was erroneously excluded as hearsay. *United States* v. *Detrich*, 865 F.2d 17 (2nd Cir., 1988). Respondent was retried on the importation charge and again convicted by a jury. On March 22, 1989, he was sentenced to the minimum sentence of five years incarceration. The Administrator finds that the Respondent has been convicted of a felony relating to controlled substances. 21 U.S.C. 824(a)(2).

The possession of a DEA registration, and with it the authority to handle controlled substances in the course of one's business or professional practice, is a privilege. That privilege is limited by the public's need to be assured that those persons who are entrusted with a registration will handle controlled substances responsibly. The public has a right to expect that health professionals will not only handle controlled substances responsibly in the course of their professional practices, but, as persons having special knowledge of the terrible consequences of drug abuse, will also be role models in the prevention of drug abuse outside of their narrow professional roles. A medical professional's participation in the trafficking of illicit drugs represents the ultimate abandonment of professional responsibility. This agency has long held that a conviction relating to illicit drugs provides a basis for revocation of a registration equal to that of a conviction relating to the diversion of legally produced drugs. See, for example, *Michael M. Motamed, M.D.*, 48 FR 49392 (1983); *Dennis Howard Harris, M.D.* 49 Fr 39930 (1984); *Walker L. Whaley, M.D.*, 52 FR 42154 (1987). The instant case is no less compelling. The public interest demands that Respondent's registration be revoked.

Having concluded therefore, that there is a lawful basis for the revocation of the Respondent's DEA certificate of registration, and having further concluded that the public interest demands such revocation, it is the Administrator's decision that Respondent's registration should be revoked. Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824 and delegated to the Administrator of the Drug Enforcement Administration, the Administrator orders that DEA Certificate of

Registration AD7409534 be, and it hereby is, revoked. Further, that Respondent's application for renewal of that registration dated May 4, 1988, be, and it hereby is, denied.

This order shall be effective April 26, 1990.

Dated: March 16, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-6817 Filed 3-26-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-31]

Anderson T. Scott, M.D.; Revocation of Registration

On April 5, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anderson T. Scott, M.D., of Covington, Virginia, proposing to revoke DEA Certificate of Registration AS1601954, previously issued to Dr. Scott (Respondent) and to deny any pending applications for renewal. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Respondent, by letter dated April 28, 1989, requested a hearing on issues raised by the Order to Show Cause and this matter was placed on the docket of Administrative Law Judge, Mary Ellen Bittner.

The hearing was convened in Washington, DC on August 29, 1989. Respondent, however, failed to appear. On motion of the government, proceedings were terminated. Judge Bittner, however, allowed Respondent to file a statement regarding his failure to appear at the hearing. By letter dated September 9, 1989, Respondent submitted a letter with the explanation that he could not attend the hearing because he did not have enough money to travel to Washington. 21 CFR 1301.54(d) states that any person who fails to appear at a hearing shall be deemed to have waived his opportunity for the hearing or the participate in the hearing unless he shows good cause for such failure. The Administrator finds that Respondent has not shown good cause for his failure to appear and therefore finds that Respondent has waived his opportunity for a hearing. Pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter based on the information contained in the investigative file.

On August 24, 1971, the Virginia Board of Medical Examiners (Board) placed Respondent on probation. Respondent agreed not to handle narcotics in Schedules II or III. Respondent was also to submit periodic progress reports from a psychiatrist. On December 13, 1971, the Board voted to continue Respondent's probationary status with the stipulation that he could not handle narcotics in Schedules II and III. Respondent was again requested to meet with the psychiatric advisory committee in June of 1972. On June 27, 1972, Respondent was taken off probation. However, the restrictions on his narcotic privileges for Schedule II and III was continued. Respondent was to continue therapy and return before the Board in June 1973.

On April 23, 1973, the Board notified Respondent that his license had again been placed on probation with the following restrictions: 1. That he give up his practice and enter a state hospital either as a patient or patient/doctor, practicing to some extent under staff supervision of a licensed member of the staff; 2. that he receive psychiatric treatment from that institution; 3. that the Board receive quarterly reports of his progress from the treating psychiatrist or psychologist; 4. that he give up his BNDD permit; and 5. that he appear before the psychiatric advisory committee and the Board in December 1973 for further evaluation.

On July 7, 1973, the Board made the following findings of fact:

> "As far back as 1961 Respondent admitted to the above normal use of the drug Talwin. Respondent continued his intermittent use of Talwin which resulted in the actions by the Board stated above. It was found as of June 1, 1973, that Respondent has not complied with the terms of probation, that Respondent was prescribing the drug Talwin and taking it himself, that Respondent was not writing prescriptions in good faith and that Respondent had violated the terms of his probation in that he had not placed himself in a state hospital and he has not seen the psychiatrist appointed by the Board for evaluation as directed by the Board."

Respondent's license to practice medicine in the State of Virginia was revoked.

On March 28, 1981, Respondent reapplied for licensure in the State of Virginia. On April 16, 1981, the Board denied Respondent's petition for reinstatement. The Board further ordered that Respondent successfully pass part three (3) of the Flex examination prior to submitting the subsequent application for reinstatement of his license to practice medicine in the State of Virginia.

On December 4, 1981, the Board reinstated the license of Respondent on a probationary basis for an indefinite period of time with the following conditions: 1. That he not prescribe Schedule II and III controlled substances and Talwin, a Schedule IV controlled substance; and 2. that he be seen by the psychiatric advisory committee prior to an appearance before the Board in November 1982. On December 12, 1982, the Board continued Respondent's probation for an indefinite period of time but made the following changes in the terms and conditions of his probation: 1. That he not prescribe Schedule II and III controlled substances and Talwin, a Schedule IV controlled substance; 2. that he not be required to appear before the Board unless he requested to do so, provided, however, that such a request could not be submitted for one year.

On December 9, 1983, the Board granted Respondent a full and unrestricted license to practice in the Senate of Virginia.

On July 25, 1988, an informal conference was held between Respondent and the Board to inquire about allegations that Respondent may have violated certain laws and regulations governing the practice of medicine in Virginia. As a result of that conference, the following findings of fact were made by the Board: 1. From December 26, 1985 through December 11, 1986, Respondent indiscriminately and excessively prescribed to patient "A" various controlled substances of high abuse potential, to wit: 3,250 dosage units of Darvocet-N 100 (Schedule IV); 158 dosage units of Percodan (Schedule II); 140 dosage units of Fiorinal (Schedule III); 80 dosage units of Vicodin (Schedule III); 200 dosage units of Valium 5 mg. (Schedule IV); and 105 dosage units of Melfiat-105 (Schedule III), without accepted therapeutic purpose and contrary to sound medical judgment.

From March 14, 1986 through August 1, 1987, Respondent indiscriminately and excessively prescribed to patient "B" the following controlled substances of high abuse potential, to wit: 80 dosage units of Darvocet-N 100 (Schedule IV); 216 dosage units of Percodan (Schedule II); 30 dosage units of Fiorinal #3 (Schedule III); 24 dosage units of Vicodin (Schedule III); and 30 dosage units of Xanax (Schedule IV), without accepted therapeutic purpose and contrary to sound medical judgment.

From December 3, 1986 through September 14, 1987, Respondent indiscriminately and excessively prescribed to patient "C" various controlled substances of high abuse potential, to wit: 550 dosage units of Percodan (Schedule II); 120 dosage units of Fiorinal (Schedule IV); and 180

dosage units of Tylenol with codeine (Schedule IV); without accepted therapeutic purpose and contrary to sound medical judgment.

From October 30, 1986 through July 13, 1987, Respondent indiscriminately prescribed to patient "D," a person known to Respondent to be abusing controlled substances, 238 dosage units of Tylox (Schedule II) and 24 dosage units of Vicodin (Schedule III) with the knowledge that they would be used for the relief of dental or periodontal pain. Based on the above findings of fact, the Board prohibited Respondent from prescribing all Schedules II and III controlled substances. Respondent was required to obtain 50 continuing education credits, primarily in pharmacology and abuse of controlled substances. Respondent was also to appear before an informal conference committee of the Board in one year to monitor Respondent's indefinite probation.

21 U.S.C. 823(f) and 824(a)(4) provide that a registration may be revoked upon a finding that Respondent's continued registration is not in the public interest. Factors to be considered are: 1. Recommendation of the appropriate state licensing board or professional disciplinary authority; 2. the applicant's experience in dispensing, or conducting research with respect to controlled substances; 3. the applicant's conviction record under Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances; 4. compliance with applicable state, Federal or local laws relating to controlled substances; and 5. such other conduct which may threaten the public health and safety. The Administrator finds that for almost 20 years Respondent has been the subject of various Board disciplinary proceedings. Respondent's own abuse of the drug Talwin has escalated into his prescribing various dangerous drugs for other patients for other than legitimate medical purposes. Respondent has been placed on probation numerous times and his ability to prescribe has been restricted for a good portion of the last 20 years. Respondent, however, continues to demonstrate that when he is fully licensed, he cannot be trusted to responsibly handle controlled substances. Respondent's certificate of registration is therefore, not in the public interest.

Accordingly, having concluded that there is a lawful basis for the revocation of Respondent's registration and for the denial of any pending applications for the renewal, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the DEA Certificate of Registration AS1601954, previously issued to Anderson T. Scott, M.D., be, and it hereby is, revoked. Any pending applications for the renewal of that registration are hereby denied.

This order is effective April 26, 1990.

Dated: March 16, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-6818 Filed 3-26-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics
Consumer Expenditure Diary and Interview Survey
Questionnaires and Cover Letters
1220-0050; CE-300, CE-301, CE-302, CE-302 Supp., CE-303 (L1-L6), CE-380, CE-383, CE-880, CE-801 A A CE-801.B, CE-803 (L), CE-305
Daily, Diary; Quarterly, Interview
45,824 responses; 79,870 hours; 13 forms

The Consumer Expenditures Surveys gather detailed information on expenditures, income and other related subjects to periodically update the Consumer Price Index. The published data provide a continuing measurement of changes in consumer expenditure patterns for economic analysis.

Supplementary Data System
1220-0083
Annual
State or local governments
14 responses, 59,260 hours, no forms

As a supplement to the Annual Survey of Occupational Injuries and Illnesses, the Supplementary Data Systems (SDS) develops information on characteristics of work-related injuries and illnesses, the demographics of injured or ill workers and the accidents or exposures which produced them. The SDS fills major needs for information which cannot be supplied by the annual survey needed by the Occupational Safety and Health Administration in program direction, compliance, and standards setting.

Employment and Training Administration
Job Corps Health Questionnaire
1205-0033; ETA 6-53, ETA 6-82
On occasion
Individuals or households

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 6-53	Individuals or households	103,000	One-time	12 minutes
ETA 6-82	Individuals or households	309	One-time	1 minute.
				20,607 total hours.

The ETA 6–52 is used to obtain the health history of applicants to the program to determine medical eligibility. The applicant must not have a health condition which represents a potentially serious hazard to the youth or others, results in a significant interference with the normal performance of duties, or requires frequent, expensive or prolonged treatment. The ETA 6–82 is used to certify an applicant's child care arrangements.

Extension

Employment Standards Administration
PreHearing Statement
1215–0085; LS–18
On occasion
Individuals or households; Businesses or other for profit
6,800 respondents; 1,088 total hours; .16 hr. per response, 1 form

Form is used to refer cases to the Office of Administrative Law Judges for formal hearing under the Longshore Act and extensions.

Reinstatement

Pension and Welfare Benefits Administration
Regulation Relating to Supplemental Payments
1210–0041
Annually
Individuals or households; businesses or other for-profit; small businesses or organizations.
44,100 responses; 3,675 hours; 5 minutes per response; 0 forms

This regulation provides among other things, that under certain conditions cost-of-living benefits payments can be made to pre-1977 retirees without such payment being considered either a pension plan or a welfare plan under ERISA. Such payments are accompanied by a written notice.

Interim FERSA Exemption Procedure
On occasion
Business or other for-profit
3; 105 hours; 35 hours per response; 0 forms

This interim rule adopts, for purposes of the Federal Employees' Retirement System Act (FERSA), the prohibited transaction exemption application procedure under the Employee Retirement Income Security Act (ERISA).

Signed at Washington, DC, this 22nd day of March, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90–6913 Filed 3–26–90; 8:45 am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

[Docket No. M–90–38–C]

Cypress Emerald Resources Corp; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Emerald Resources Corporation, P.O. Box 871, Waynesburg, Pennsylvania 15370 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Cyprus Emerald Mine No. 1 (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The ground check circuit will cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. The mine is currently utilizing undervoltage release breakers to meet the requirements for undervoltage protection. After each power outage, it is necessary for an employee to travel to each belt drive and reset the low-voltage breakers before the belts can start and production can resume.

3. As an alternate method, petitioner proposes to use contactors which will open when either the ground or pilot check wire is broken.

4. In support of this request, petitioner states that—

(a) Only the conveyor belt starting equipment would be affected by this petition; and

(b) Short-circuit protection would continue to be provided by a circuit breaker with the required interrupting ratings.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administrtion, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 26, 1990. Copies of the petition are available for inspection at that address.

Dated: March 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–6905 Filed 3–26–90]

BILLING CODE 4510–43–M

[Docket No. M–90–39–C]

Mettiki Coal Corporation; Petition for Modification of Application of Mandatory Safety Standard

Mettiki Coal Corporation, Route 3, Box 124A, Deer Park, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation; minimum requirements), to its Mettiki Mine (I.D. No. 18–00621) located in Garrett County, Maryland. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M–90–41–C), petitioner proposes to use air from belt haulage entires to ventilate active working places.

3. As an alternate method, in lieu of the point type heat sensors which are

currently accepted, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide system in the belt haulage entries. The petitioner outlines the specific procedures and equipment in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition my furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 26, 1990. Copies of the petition are available for inspection at that address.

Dated: March 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–6906 Filed 3–26–90; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–40–C]

Mettiki Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Mettiki Coal Corporation, Route 3, Box 124A, Deer Park, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Mettiki Mine (I.D. No. 18–00621) located in Garrett County, Maryland. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate transformers be coursed directly into the return.

2. In a separate petition (M–90–41–C), petitioner proposes to use air from belt haulage entries to ventilate active working places.

3. As an alternative method, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide system in the belt haulage entires. The petitioner outlines specific procedures and equipment in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 26, 1990. Copies of the petition are available for inspection at that address.

Dated: March 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–6907 Filed 3–26–90; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–43–C]

Superior Coal Company; Petition for Modification of Application of Mandatory Safety Standard

Superior Coal Company, P.O. Box 193, Lovilia, Iowa 50150 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its 2B Mine (I.D. No. 13–02167) located in Lucas County, Iowa. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that electric face equipment be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

2. The height of the coal seam is irregular and is less than 24 inches in height at various locations, and there are undulations in the mine floor and rolls in the roof.

3. The roof drill used a this mine has a canopy over the tram controls but not over the drill controls.

4. The drill is provided with an automated temporary roof support (ATRS) system.

5. The installation of a cab or canopy on the roof drill would create a diminution of safety.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 26, 1990. Copies of the petition are available for inspection at that address.

Dated: March 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–6908 Filed 3–26–90; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90–23]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); 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, Aeronautics Advisory Committee.

DATES: April 18, 1990, 8 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, room 625, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics, Exploration and Technology (OAET), National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2367.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics, Exploration and Technology. The Committee, chaired by Mr. Phil M. Condit, is comprised of 19 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda: April 18, 1990.

8 a.m.—Opening Remarks
8:30 a.m.—Aeronautics Budget Status
9 a.m.—Aeronautics Strategy and Program
Direction—Overview

10:30 a.m.—NASA/Federal Aviation Administration Cooperation
11 a.m.—High Speed Research Status
1 p.m.—National Aero-Space Plane Update
2 p.m.—Status of Ad Hoc Activities
2:15 p.m.—NASA Responses to Ad Hoc Team Recommendations
3:15 p.m.—Discussion of Issues and Recommendations
4:30 p.m.—Adjourn

Dated: March 20, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-6862 Filed 3-26-90; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Proposed Subagreement Pertaining to State Resident Engineers Between NRC and the State of Illinois

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Draft Subagreement No. 3 between NRC and the State of Illinois for public comments.

SUMMARY: Section 274i of the Atomic Energy Act of 1954, as amended, allows the Nuclear Regulatory Commission (NRC or Commission) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." This section 274i. agreement, typically in the form of a Memorandum of Understanding (MOU), differs from an agreement between NRC and a State under the "Agreement State" program; the latter is accomplished only by entering into an agreement under section 274b. of the Atomic Energy Act. A State can enter into a section 274i. MOU whether or not it has a section 274b. agreement.

In April of 1984, NRC and the State of Illinois signed an "umbrella" MOU, providing principles of cooperation between the State and NRC in areas of concern to both.

In June of 1984, NRC and the State of Illinois signed Subagreement No. 1 which provided the basis for mutually agreeable procedures whereby the State may perform inspection functions for and on behalf of the Commission at certain reactor and materials licensees' facilities which generate low-level radioactive waste.

On November 22, 1988, NRC published draft Subagreement No. 2 (53 FR 47279) regarding ASME Code inspections, for public comment. That subagreement is undergoing final review by the staff.

In Subagreement No. 3, NRC and the Illinois Department of Nuclear Safety (IDNS) seek to allow Illinois Resident Engineers to participate in NRC inspections at nuclear power plants in Illinois. This subagreement is one of the first to be signed under the NRC's policy regarding "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530; 2/22/89). As stated in the policy, "The NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC." The policy also requires that proposed agreements entered into under the provisions of the policy be published in the **Federal Register** for public comment.

DATES: Submit comments by April 26, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Deliver comments to: 7920 Norfolk Avenue, Room P-216, Bethesda, MD between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comment received may be examined at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frederick C. Combs, Assistant Director of State, Local and Indian Relations, State Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-0325.

Dated at Rockville, MD this 21st day of March 1990.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Governmental and Public Affairs.

Agreement Pertaining to State Resident Engineers Between the U.S. Nuclear Regulatory Commission and the State of Illinois

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Illinois enter into this Agreement under the authority of the Memorandum of Understanding (MOU) dated April 27, 1989, between NRC and the State, secton 274i of the Atomic Energy Act of 1954, as amended, and section 4 of the Illinois Nuclear Facility Safety Act.

The State recognizes the Federal government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the NRC to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure the common defense and security and to protect the public health and safety. Under these statutes, NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC. NRC will only consider State proposals for instruments of cooperation to conduct inspection programs of NRC-regulated activities that provide for close cooperation with, and oversight by, the NRC.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, conducting safety inspections of nuclear power plants to assure that the plants are designed, constructed, tested, maintained, operated, and decommissioned in accordance with NRC regulatory requirements.

The NRC operating reactor inspection program is conducted by Headquarters personnel, region-based inspectors, and Resident Inspectors. NRC Resident Inspectors are located at each nuclear power plant site. Resident Inspectors provide the major onsite NRC presence for direct observation and verification of licensee activities. The NRC Resident Inspector also acts as the primary onsite

evaluator for the NRC inspection effort related to such items as Licensee Event Reports, events, and incidents. NRC Resident Inspectors also interact with local officials, the press, and the public.

D. This Agreement is intended to be consistent with and implement the provisions of the NRC's policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989) which relates to State proposals to enter into instruments of cooperation with the NRC concerning State participation in NRC inspections at operating commercial nuclear power plants.

III. Scope

A. This Agreement defines the way in which NRC and the State, with the assistance of State Resident Engineers, will cooperate in planning and conducting inspections of nuclear power plants in the State to ensure compliance with NRC regulations. This Agreement does not apply to investigations or inquiries conducted by NRC.

B. For the purpose of this Agreement, inspection is defined as the examination, review, or evaluation of any program or activity of a licensee to determine the effectiveness of the program or activity in ensuring that the health and safety of the public and plant personnel are adequately protected and that the facility is operated safely; and to determine compliance with any applicable NRC rule, order, regulation, or license condition pursuant to the Atomic Energy Act of 1954, as amended, and commitments made to NRC.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC or the State or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State or State Resident Engineers authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; and (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

E. Under this Agreement, one State Resident Engineer may be assigned to each nuclear power plant site in the State.

IV. NRC's General Responsibilities

NRC is responsible for conducting safety inspections of nuclear power plants to ensure that the plants are designed, constructed, tested, operated, maintained, and decommissioned in accordance with NRC regulatory requirements. These inspections are conducted in accordance with the NRC Inspection Manual using personnel appropriately qualified and trained to perform the necessary tasks. Only the NRC may take appropriate enforcement actions for all inspections conducted under this Agreement.

V. The State's General Responsibilities

A. The State, through its State Resident Engineer, will cooperate with NRC in performing safety inspections. Such inspections shall be conducted in accordance with NRC regulatory requirements and procedures governing operating nuclear power plants in the State and under the oversight of an authorized NRC representative.

B. The State will cooperate with the NRC in such inspections as necessary for the NRC to ensure that power reactors in the State continue to be operated without undue risk to the public health and safety and the environment.

C. State activities will be performed in accordance with Federal standards and requirements and NRC practices, with no undue burden on the NRC or its licensees.

VI. Implementation

The State and NRC agree to work in concert to assure that the following staffing, training, inspection and enforcement, communications and information exchange, and conflict resolution protocols regarding the State Resident Engineer Program are followed.

A. Staffing

1. The State will select its State Resident Engineers in accordance with its own procedures and qualifications, patterned after those for NRC Resident Inspectors.

2. State Resident Engineers will have education and experience equivalent to that required for an NRC Resident Inspector.

3. The State is responsible for obtaining security clearances for State Resident Engineers that are acceptable to the nuclear power plant licensee.

4. The State is responsible for ensuring that State Resident Engineers comply with all requirements established by the nuclear power plant licensee, including fitness for duty, site access, and onsite space and support. NCR is not responsible for ensuring access or space for State personnel.

5. The State will certify to NRC that each State Resident Engineers has no financial or other interests that may call into question his or her objectivity or that create a conflict of interest or the appearance of a conflict of interest.

B. Training

1. State Resident Engineers performing inspection functions will be qualified and certified by the State in accordance with the NRC Inspection Manual or its equivalent. Such qualification and certification will be made for each inspection activity in which a State Resident Engineer will participate, such as:

Reactor operations (boiling-water reactor (BWR))
Reactor operations (pressurized-water reactor (PWR))
Reactor engineering—electrical
Reactor engineering—instrumentation

2. NCR will use its best efforts to make space available in its inspector training courses and special orientation programs to accommodate the training needs of State Resident Engineers.

3. The State will pay the travel and per diem expenses of State Resident Engineers attending training courses. Where NRC establishes special training classes, the State agrees to reimburse NRC for its costs of training State Resident Engineers, if requested.

4. NCR will provide one week of on-the-job training and orientation for the State Resident Engineer at each site.

5. Information acquired by NRC relating to the ability of a State Resident Engineer to perform inspections satisfactorily in accordance with NRC regulations, requirements, standards, and procedures will be provided to the State for appropriate action.

C. Inspections and Enforcement

1. The State Resident Engineer's activities are intended to assist NRC in the conduct of its regulatory activities.

2. The State Resident Engineers are responsible for meeting all requirements imposed by a licensee related to personal safety, radiological protection, and access at the plant site.

3. To the extent practicable, it is intended that the State Resident Engineers will arrange their schedules of inspection activities in coordination with NRC personnsl in order to provide the widest possible coverage of the plant and its operations.

4. If the State intends to participate in the inspection process, the State will

provide recommendations for the NRC inspection plan, consistent with NRC Inspection Manual Chapter 2515, generally describing proposed inspection activities for the upcoming month. These recommendations will include a schedule of the inspections and a listing of NRC procedures to be used by the State Resident Engineers. In accordance with section VI.C.1 above, such recommendations shall be designed to assist NRC site inspection activities. NRC shall take such recommendations into account in formulating its Master Inspection Plans.

5. The State will submit the monthly inspection recommendations to the NRC Resident Inspector in sufficient time to allow NRC review before preparation of the inspection plan. NRC will review the State's inspection recommendations and will inform the State of any activities that appear inappropriate, untimely, or impose an undue burden on NRC or the licensee, such as schedular conflicts with NRC special inspections, management meetings, or INPO visits. The State will make adjustments to the State inspection recommendations, as necessary, to address NRC comments. Taking into account recommendations made by the State, NRC will be responsible for developing a single site inspection plan. NRC staff inspection activity will not be reduced for a facility below minimum program requirements on the basis of the availability of State's inspection resources.

6. NRC will coordinate with the State Resident Engineers, to the extent practicable, unscheduled inspections conducted in response to events, issues, and allegations.

7. An NRC Resident Inspector will initially accompany each State Resident Engineer on at least two inspections to review the performance of the State Resident Engineer. On the basis of these reviews, an NRC Resident Inspector will make recommendations to the State Resident Engineer regarding the preparation, conduct, and technical adequacy of the inspections. On a monthly basis, the NRC Senior Resident Inspector shall determine and authorize which, if any, inspections may be conducted by the State Resident Engineer on an unaccompanied basis. Such inspections shall be conducted in accordance with sections VI.C.4 and VI.C.5. State Resident Engineers may perform as members of NRC inspection teams, provided State Resident Engineers are qualified in the activity to be examined by the NRC inspection team and the NRC inspection team leader authorizes the State Resident Engineer's participation. All inspections performed by State Resident Engineers shall be in accordance with the NRC site inspection plans and NRC inspection practices.

8. The NRC Resident Inspectors may accompany the State Resident Engineers on any inspection. The State Resident Engineers may, at the NRC's discretion, accompany the NRC Resident Inspectors on inspections, at inspection entrance and exit interviews, and at enforcement meetings. The State recognizes that there may be occasions when, because of the sensitive nature of certain inspections and meetings, it will be necessary for NRC, at its discretion, to conduct such activities privately and separately.

9. NRC will provide the State with a copy and current updates of the NRC Inspection Manual and Master Inspection Plan (MIP) for each reactor site in the State at which a State Resident Engineer is stationed. The State will hold the MIP in confidence and will not release it to the public or licensees except in accordance with section VI.D.6 of this Agreement.

10. Allegations received by the State Resident Engineers will be provided to the NRC Resident Inspectors and processed in accordance with NRC procedures. Upon request by NRC, the State Resident Engineers will be made available to assist the NRC in addressing allegations.

11. The results of all State Resident Engineers' inspections will be discussed in a timely manner with the NRC Resident Inspectors. Matters that may require action by the licensee will be discussed with licensee management by the NRC Resident Inspectors, or by the State Resident Engineers in the presence of the NRC Resident Inspectors, except as may be necessary under section VI.C.12.

12. If a State Resident Engineer identifies situations with immediate safety significance, he or she will immediately communicate this information to the licensee and the NRC Resident Inspectors. It is essential that this information be discussed with an NRC representative immediately upon discovery so that NRC may take prompt action as dictated by the situation. If the NRC Resident Inspectors are unavailable, a State Resident Engineer will transmit this information immediately to NRC, Region III (the Regional Duty Officer during non-business hours).

13. All written communications with the licensee will be made through NRC. If a State Resident Engineer prepares a written report of the results of an inspection activity covered by this Agreement, the report will not be sent directly to the licensee, but will be sent to the NRC designated Regional office and to the NRC Resident Inspectors. The State is responsible for the technical adequacy of State Resident Engineers' inspection reports. NRC will forward a cover letter discussing the issues, if any, that the NRC believes warrant action by the licensee.

14. If NRC identifies potential violations of NRC regulatory requirements as a result of the State's inspection activities, NRC may take appropriate enforcement action as set forth in Appendix C of 10 CFR part 2. The State Resident Engineers will assist NRC in the preparation of enforcement actions and during any enforcement conferences or hearings for those matters that were identified as a result of the State's inspection activities. Enforcement action, if any, will be taken only by NRC.

D. Communications and Information Exchange

1. The State and NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

2. NRC and the State agree to meet periodically, at least annually, at mutually agreeable times to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Region III Offices or at the NRC Resident Inspector's Office.

3. NRC will inform the State of formal meetings with licensee management involving a site to which a State Resident Engineer is assigned and provide the State the opportunity to attend, with the exception of those meetings that NRC determines should be closed as provided in section VI.C.8 of this Agreement.

4. The State and NRC agree to consider each other's identified information needs and concerns when developing inspection plans.

5. The State will conform to NRC practices regarding information disclosure.

6. To preclude the premature public release of sensitive information, the State and NRC shall protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Illinois Freedom of Information Act and other applicable authority. The State and NRC shall consult with each other before releasing sensitive or proprietary information related to this Subagreement.

7. Press releases regarding State's activities or NRC inspections in which the State has been involved under this Agreement which are prepared by one party will be provided to the other party before issuance. Press releases are to conform to information disclosure restraints of sections VI.D.5 and VI.D.6.

8. The State will provide NRC with written notice at least 60 days before the stationing of a State Resident Engineer at a site.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Reactor Projects, Region III, NRC, and the Manager, Office of Nuclear Facility Safety, Illinois Department of Nuclear Safety. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and State staff members on technical and other day-to-day activities.

VIII. Resolution of Conflicts

A. If disagreements or conflicts arise about matters within the scope of this Agreement, NRC and the State will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over the significance of findings will be the initial responsibility of the NRC Region Division of Reactor Projects management.

C. Differences that cannot be resolved in accordance with sections VIII.A and VIII.B will be reviewed and resolved by the Regional Administrator and the Director, Illinois Department of Nuclear Safety. The decision of the Regional Administrator will be final.

D. The NRC's General Counsel has the final authority to interpret the NRC's regulations.

IX. Effective Date

This Agreement shall become effective upon signing by the Director, Illinois Department of Nuclear Safety, and the Regional Administrator, Region III, NRC, and shall remain in effect permanently unless terminated by either party on thirty days written notice.

X. Duration, Termination, and Modification

A formal review, not less than 6 months after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected.

For the U. S. Nuclear Regulatory Commission.

Regional Administrator
Date:

For the State of Illinois

Director, Illinois Department of Nuclear Safety
Date:

[FR Doc. 90-6900 Filed 3-26-90; 8:45 am]
BILLING CODE 7590-01-M

Atomic Safety and Licensing Board; Safety Light Corp., et al.; Status Report Conference

Before Administrative Judges: Marshall E. Miller, Chairman, Oscar H. Paris, and Frederick J. Shon.

In the matter of Safety Light Corp., et al., (Bloomsburg Site Decontamination)

[Docket Nos. 030-05980, 030-05981, 030-5982, 030-08335, 030-08444, ASLBP No. 89-590-01-OM, 90-598-01-OM-2]

March 19, 1990.

A Status Report Conference of parties and counsel will be held at 9:30 a.m. on Thursday, April 19, 1990, in the NRC Public Hearing Room, Fifth Floor, 4350 East-West Highway, Bethesda, Maryland.

The Licensing Board will review the progress and current status of this proceeding at that conference. Any unresolved motions or discovery requests may be taken up, as well as confirmation of the prehearing and hearing schedule of this epedited proceeding. The Board will consider the further specifications, clarification and simplification of the issues.

The parties are directed to have in the hands of the Board all reports, motions and other filings at least one week prior to the conference. The Commission's Rules of Practice as amended (10 CFR ¶2.700 *et seq.*) govern the procedure to be followed in this hearing.

It is so ordered.

Bethesda, Maryland, March 19, 1990.

For the Atomic Safety and Licensing Board.
Marshall E. Miller,
Chairman, Administrative Judge.

[FR Doc. 90-6899 Filed 3-26-90; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27813; File No. SR-Amex-90-02]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Records of Settlement Hearings

On January 30, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Amex Rule 8 of the Exchange's Rules of Procedure Applicable to Disciplinary Proceedings. The proposed rule specifies that a record of a settlement disciplinary hearing may be made by tape recording rather than stenographic reporter and provides that such record need not be transcribed as a matter of routine.

The proposed rule change was noticed in Securities Exchange Act Release No. 27681 (February 7, 1990), 55 FR 5103 (February 13, 1990). No comments were received on the proposal.

The Amex proposes to amend Rule 8 of the Amex Rules of Procedure Applicable to Disciplinary Proceedings in order to establish record procedures for settlement hearings conducted by a Disciplinary Panel ("Panel") of the Exchange. Existing Rule 8 requires that a stenographic record be made of every Panel meeting at which evidence or testimony is presented and requires that the record be transcribed. The Exchange, however, historically has applied these Rule 8 requirements to non-contested hearings at which a Panel considers settlement agreements reached between the Exchange's Enforcement Department and a party charged with disciplinary violation.

The Exchange proposes to revise Rule 8 to indicate that records of settlement hearings may be made by tape recording. The proposal also provides that the tape recording need be transcribed only upon request of the

[1] 15 U.S.C. 78s(b)(1) (1982).
[2] 17 CFR 240.19b-4 (1989).

party charged, the Exchange, or the Panel, or if review of the Panel's decision is sought by the Board of Governors.

The Exchange believes that this rule proposal will clarify the current record requirements set forth in Rule 8. The Amex argues that Rule 8, read literally, does not require a stenographic record of a settlement hearing because the Rule only applies to hearings at which evidence or testimony is presented. The Exchange states that settlement hearings are held only to allow a Panel to review and consider Stipulations of Fact and Consents to Penalty agreed to by its Enforcement Department and the party charged with a rule violation. Because there are no facts or rules in dispute at the hearing, evidence or testimony regarding the merits of a case is not permitted at a settlement hearing. The Exchange, nevertheless, believes it is advisable to amend Rule 8 in order to remove possible ambiguity in the rule which may result from the past practice of applying Rule 8's record procedures to settlement hearings.

The Exchange also states that this proposal is prompted by budgetary concerns associated with the cost of hiring a professional court reporter to attend and transcribe settlement hearings where the need for a transcript is unlikely to arise. In this regard, the Exchange argues that the need to routinely prepare transcripts of settlement hearings for purposes of review is limited because there is no right of appeal from a Panel determination in a settlement proceeding.[3] The proposal, however, does provide that the tape recording will be transcribed upon request of specified parties, including the party charged with the rule violation.

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 sections 6(b)(5), (7), and 6(d)(1)[4] of the Act. The Commission believes that the proposal, which will clarify the recordkeeping procedures for Panel hearings, should remove any ambiguity in existing Rule 8 requirements with regard to hearings where testimony or evidence is presented before a Panel and hearings where settlement agreements are reviewed by a Panel. The proposal will establish new record procedures for settlement hearings. This proposal should result in clear and consistent procedures for recording of the Exchange's contested and non-contested disciplinary proceedings.

The Commission believes that it is reasonable for the Amex to set different record requirements for Exchange disciplinary proceedings where a Panel convenes to receive evidence or testimony and where a Panel convenes to review a settlement agreement. The Commission believes that a tape-recorded record is appropriate when a Panel convenes to consider a settlement agreement reached between the party charged with a violation and appropriate Exchange representatives. In the context of settlement disciplinary procedures, the Commission notes that the Panel's role is limited and that the party has no right of appeal from a Panel determination. In contrast, in the context of contested disciplinary proceedings, the Panel plays an active role in receiving and evaluating witnesses and testimony, reaching a determination, and imposing a penalty when appropriate. Moreover, a party found guilty of a disciplinary violation may request review of a Panel's determination and/or the penalty imposed. A stenographic, transcribed record, therefore, is essential to accurately preserve the Panel's proceedings for appeal.

The Commission also believes that the provisions of the proposed rule which provide for tape recording of settlement hearings and which specify when a record of such hearings must be transcribed are consistent with the requirement set out in section 6(d)(1) of the Act that an exchange preserve a record of its disciplinary proceedings. Section 6(d)(1) of the Act requires that an exchange keep a record of its disciplinary proceedings but does not prescribe a method for maintaining a record of the proceedings. As noted above, the Commission believes that it is reasonable for an Exchange to tailor its record procedures to the purpose of the disciplinary proceedings. The proposed rule will continue to provide for an accurate and reliable record of the settlement proceedings and will only change the form in which this record is kept. Moreover, because the proposal provides that a record of the settlement proceedings be transcribed upon request, the proposal offers a fair opportunity for the party charged to obtain a transcript and also ensures that a transcript is available, if the Board of Governors seeks review of the Panel's determination and/or penalty. For these reasons, the Commission believes that the proposal provides a fair procedure in the disciplining of Exchange members and persons associated with members with respect to the preservation of records.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: March 16, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6842 Filed 6-26-90; 8:45 am]

BILLING CODE 8010-01-M

[3] *See* Amex Constitution, Article V, sec. 2 and Amex Rule 345(i) which provides that where a Disciplinary Panel convenes to consider a written stipulation of fact and consent to a specified penalty and renders a determination, four members of the Board of Governors may request review of the determination and/or penalty prescribed by the Panel. The party charged with the violation does not have a right to appeal. *But see* Amex Constitution, article V, sec. 1(b)(5) which provides that any member, member organization, or approved person found guilty of charges by a Disciplinary Panel may seek review of that determination and/or the penalty imposed. Any four members of the Board of Governors may also seek review.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(c)(12) (1989).

[Release No. 34-27808; File No. SR-DTC-90-01]

Self-Regulatory Organizations; the Depository Trust Company; Proposed Rule Change Relating to the Admission of Participants in DTC

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b), notice is hereby given that on February 9, 1990, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the 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 proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing herewith the following statement:

Policy Statement on the Admission of Participants

DTC rules 2 and 3 address the admission of applicants to participant status. These rules were drafted and adopted in 1973, when the depository took its present form and sought to add qualified banks to its broker-dealer membership in order to immobilize

institutionally-owned securities in a book-entry environement. The immobilization in DTC of securities held by banks for themselves and their institutional customers is now well-established. At year-end 1989, DTC held securities with a market value of $4 trillion for more than 600 broker-dealer and bank participants and for other clearing agencies.

The risks of admitting as a participant an entity that is unable to meet the financial obligations arising from its depository transactions, or otherwise misuses the system, can directly affect all other participants. Participants are entitled to be assured, and DTC's rules so provide, that admission as a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability and character. Further, under the rules, each participant must continue to be in a position to demonstrate that it meets these standards. To date, in evaluating such adherence, DTC has been able to rely in large part on the fact that its broker-dealer and bank Participants are subject to comprehensive federal and state regulation relating to, among other things: Capital adequacy, financial reporting and recordkeeping, operating performance, disqualification from employment, and business conduct. Pursuant to such regulation, DTC's participants receive periodic regulatory examinations to assure their compliance with these requirements and are subject to disciplinary action if violations are found.

In the future, organizations other than those types specified in section 17A(b)(3)(B) of the Securities Exchange Act of 1934, as amended, may apply to become participants. Unless such applicant organizations are subject to regulatory agency oversight, they will not qualify for admittance inasmuch as the application of DTC's own resources could not provide an adequate substitute for the kind of continuing regulatory oversight described above.

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 Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Participant qualifications are specified in DTC rules 2 and 3. Rule 2 defines general standards of financial condition, operational capability and good character, in order to condition an applicant's admission on the adequacy of its financial resources, operational ability, and personnel. Rule 3 specifies the types of organizations that are eligible to become a participant. The subject policy statement would interpret Rule 3 by making it clear that, for the reasons set forth in the policy statement, unregulated organizations would not qualify for admission. The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act"), particularly those provisions of section 17A of the Act relating to participation in registered clearing agencies. The policy statement, in part, makes it clear that organizations of the types specified in section 17A(b)(3)(B) of the Act are eligible to become participants in DTC. DTC believes that regulatory agency oversight of all DTC participants protects DTC and protects all participants in their depository activity since DTC resources cannot adequately substitute for continuing regulatory agency oversight of its users.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC's experience suggests that because of the actual and potential costs associated with direct participation, including a participant's need to maintain a full-time staff of trained operations personnel, few financial organizations not subject to regulatory agency oversight are likely to conclude that direct participation in the depository is economical and desirable. While DTC acknowledges that the proposed rule change may impose some additional burden on an unregulated financial organization wishing to achieve direct participation, for the reasons stated above we believe that such burden is necessary and appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited or received comments on 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, 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 Room, 450 Fifth Street, NW., Washington, DC. 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 file number SR-DTC-90-01 and should be submitted by April 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 16, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6837 Filed 3-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27823; File No. SR-ISCC-89-01]

March 20, 1990.

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of an Amendment to a Proposed Rule Change Concerning the PORTAL System.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 23, 1990, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the amendment to a proposed rule change (File No. SR-ISCC-89-01) as described in Items I, II, and III below, which Items have been prepared by ISCC. Notice of the original filing was published in the **Federal Register** on December 29, 1989.[1] 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

Modify Rule 2 section 2 of ISCC's Rules and Procedures by adding the italicized material:

Each applicant to become a Member shall complete and deliver to the Corporation an Applicant Questionnaire in such form as prescribed by the Corporation from time to time, *such consents as required by the Corporation from time to time* and, upon the request of the Corporation, FOCUS Reports or other similiar financial and or regulatory reports where applicable.

Modify Rule 40 by adding the italicized:

The Corporation may establish links with one or more Foreign Financial Institutions and may make available to any Member, *who has entered into and maintains such agreements and/or consents which the Corporation may from time to time require,* such services which such Foreign Financial Institutions shall make available to the Corporation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC 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. ISCC 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 the proposed rule change is to establish the authority of the Corporation to require Members and applicants for membership, who want to access ISCC's link with CEDEL for the settlement of PORTAL transactions, to enter into and maintain any consent forms that may be necessary to fulfill obligations imposed on ISCC and CEDEL to release to each other information obtained by the respective entity in the normal course of its activities relative to PORTAL activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Witin 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 reason 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 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 will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to File Number SR-ISCC-89-01 and should be submitted by April 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6838 Filed 3-26-90; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 27563 (December 21, 1989), 54 FR 53792.

[Release No. 34-27821; [File No. SR-DTC-90-02]

Self-Regulatory Organizations; Proposed Rule Change by the Depository Trust Company, Relating To Establishing a Procedure To Recall Certain Deliveries Which Have Created Short Positions as a Result of Call Lotteries

March 19, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act") 15 USC 78s(b)(1), notice is hereby given that on February 22, 1990 the Depository Trust Company ("DTC") filed with the Securities Exchange Commission ("Commission") the 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 proposed rule change from interested persons.

I. Self-Regualtory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC's proposed rule change establishes a procedure to recall certain deliveries of securities which have created short positions because the securities were subsequently determined to be called securities in DTC's call lottery.

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. 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 for the proposed rule change is to eliminate certain short positions which are created as a result of deliveries of securities which are subsequently determined to be called securities in DTC's call lottery.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since it will help to eliminate the record keeping burdens, costs and risks for DTC and its participants associated with aged, short positions.

B. Self-Regualtory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regualtory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC's user advisory committee formed to assist DTC in developing a program to eliminate short positions, has supported the proposed rule change. Committee members include representatives from DTC, its bank and broker participants, the National Securities Clearing Corporation, the Bank Depository User Group, and the New York Clearing House Association.

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, NW., Washington, DC 20549. Copies of the submissions, 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 USC 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 filings will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to file number SR–DTC–90–02 and should be submitted by April 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–6827 Filed 3–26–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27825; File No. SR–NASD–89–49]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Board of Governors' Review of Disciplinary Actions

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 31, 1989, and amended on March 8, 1990,[1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 [2] ("Act") and Rule 19b–4 [3] thereunder. The proposal amends Articles II and III of the NASD Code of Procedure to modify existing procedures and establish new procedures in connection with hearings before certain committees and proceedings in connection with the Board of Governors' review of disciplinary actions taken by such committees.

Notice of the proposed rule change together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 27567, December 26, 1989) and by publication in the **Federal Register** (55 FR 378, January 4, 1990). 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 the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: March 20, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–6828 Filed 3–26–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27826; File No. SR–NASD–90–4]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Amending the Uniform Application for Securities Industry Registration or Transfer, Form U–4, and the Uniform Termination Notice for Securities Industry Registration, Form U–5

The National Association of Securities Dealers, Inc. ("NASD"), submitted on January 19, 1990, to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder.[2] The

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[1] Amendment No. 1 to the proposed rule change is merely a technical amendment and is available in the Commission's Public Reference Room.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b–4 (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

proposal amends the Uniform Application for Securities Industry Registration or Transfer ("Form U–4") and the Uniform Termination Notice for Securities Industry Registration ("Form U–5").

Over the last several years, the North American Securities Administrators Association ("NASAA"), the NASD, the New York Stock Exchange ("NYSE") and other self-regulatory organizations accumulated a number of requested modifications to clarify and strengthen the existing provisions contained in Form U–4 and Form U–5. The purpose of the proposed rule change is to adopt the requested modifications which NASAA and the NASD Board of Governors have approved.

Among the significant changes to Form U–4 are (1) The addition and deletion of those registered representative positions and examinations which have been added or deleted since the last revision of Form U–4 in 1985, (2) the addition of language making the applicant aware that in consenting to arbitrate, an arbitration award may be entered as a judgment in any court of competent jurisdiction, and (3) a specific provision stating that the applicant consents to service of process by the self-regulatory organization. The modifications to Form U–5 include a reminder to NASD members of their continuing obligation under article IV, section 3 of the NASD by-laws to amend Form U–5 to report changes in the status of a reportable matter until a final disposition is reached.

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27683, February 7, 1990) and by publication in the Federal Register (55 FR 5105, February 13, 1990). 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 the NASD and, in particular, the requirements of section 15A [3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved, effective May 2, 1990.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[4]

Dated: March 20, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–6829 Filed 3–26–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27827; File No. SR–NASD–90–14]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Late Trade Reporting

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 March 8, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to Schedules D and G to the NASD By-Laws and an accompanying interpretation of the Board of Governors relating to members' obligations to report transactions in listed and National Market System securities within 90 seconds after execution.

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 NASD 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 NASD 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 NASD's transaction reporting plan for NASDAQ National Market System ("NMS") securities requires reporting of trades within 90 seconds after execution. Transactions by NASD members in listed securities are also required to be reported within 90 seconds pursuant to the Consolidated Tape Association ("CTA") plan. These requirements are codified in Schedules D and G of the NASD By-Laws (pertaining to NASDAQ and listed securities, respectively). The Schedules provide that members reporting executions in applicable securities after the 90 second time frame must indicate that the reports are late by attaching an identifier to each report.

The NASD, along with other participants of the CTA, have recently focused on the occurrences of late trade reporting in our markets. As a result, the NASD's Market Surveillance Department conducted a review of all transactions reported as late during a three month period (12/22/88 through 3/21/89). This study revealed that during the three months, 14 firms submitted a number of late trade reports ranging from 2.4% to 44.3% of their total trades. Although some of the late reports were due to the firm's experiencing temporary systems outages and difficulties in transmitting trade data to the tape, the Association believes that it is appropriate to remind NASD members of their trade reporting responsibilities, and to make the failure to report transactions in a timely manner a violation of the Rules of Fair Practice.

The Association believes that the instances of late trade reporting in listed and NASDAQ/NMS securities, both during market hours and reports deferred until after the close, requires revisions to Schedules D and G to clarify members' obligations. In addition to these amendments, the NASD Board of Governors proposes adding an interpretation to explain the obligations of timely trade reporting and the consequences of a pattern or practice of late trade reporting.

The Association believes that reminding NASD members of their obligations of timely trade reporting is appropriate and necessary, especially because the Automated Confirmation Transaction service ("ACT"), which has been approved by the Commission for self-clearing firms, requires participants to submit trade data to ACT in reportable securities within the same time frames as the trade reporting rules, i.e., within 90 seconds.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Securities Exchange Act of 1934. Section 15A(b)(6) requires that the rules of the Association be designed to "foster

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[3] 15 U.S.C. 78*o*–3 (1982).

[4] 17 CFR 200.30–3(a)(12).

cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

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 NASD 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, NW., Washington, DC 20549. Copies of the submissions, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 20, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6832 Filed 3-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27812; File No. SR-NYSE-90-11]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Proposed Rule Change Relating to Amendments to Rule 80A/Rule 800

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 12, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change amends NYSE Rule 80A to add a new provision to the Rule to attempt to minimize excess market volatility and promote stabilization of the market. The proposed amendment would be applicable to trading in baskets of stocks, as defined in Exchange Rule 800(b)(iii), *i.e.*, a group of stocks eligible for execution in a single trade through the "Exchange Stock Portfolio" [1] (ESP) Service. New paragraph (e) to Rule 80A would require that when the Dow Jones Industrial Average [2] (DJIA) advances by 50 points from its previous trading day's close, no purchase of a basket could be made at a price equal to or greater than the aggregate Tier 1 offer in the cash market (as defined in Rule 803(e)). Conversely, when the DJIA declines by 50 points from its previous close, no sale of a basket could be made at a price equal to or less than the aggregate Tier 1 bid in the cash market.

The Exchange submitted the framework for trading ESPs, along with appropriate rule amendments (the "800 series" of rules applicable to ESP trading) in SR-NYSE-89-5. (Whenever all Exchange listed component stocks are open for trading, there will be a "Tier 1" market for one ESP calculated by summing the current quotations for each of the stocks according to the weighted value of each stock in the basket.)

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 and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*—During the past several years, the Exchange and other market centers have been concerned that sophisticated trading strategies relating to program trading may create excess volatility that undermines investor confidence in the fairness and orderliness of the securities markets, and may in fact constitute a threat to the viability of America's capital markets.

Beginning in 1988, the Exchange has taken several steps to address market volatility:

(i) The Exchange introduced the Individual Investor Express Delivery Service ("IIEDS") to provide for prioritized delivery of systematized orders of under 2,100 shares entered for the accounts of individual investors. (*See* SR-NYSE-88-24.)

(ii) The Exchange, in conjunction with the Chicago Mercantile Exchange, developed the procedures in current Rule 80A, whereby program trading orders are diverted to a separate file for five minutes on any day that the price of the primary Standard and Poor's 500 Stock Price Index futures contract traded on the Chicago Mercantile Exchange declines 12 points below its closing value on the previous trading day. (*See* SR-NYSE-88-22.)

(iii) The Exchange and the nation's other securities and futures markets have agreed to coordinated halts in trading of one hour on any day that the Dow Jones Industrial Average declines by 250 points from its closing value on the previous trading day, and two hours on any day that the Dow Jones

[1] "Exchange Stock Portfolio" and "ESP" are service marks of the NYSE.

[2] Dow Jones Industrial Average is a service mark of Dow Jones & Company, Inc.

Industrial Average declines by 400 points from its closing value on the previous trading day. (*See* SR–NYSE–88–23.)

(iv) The Exchange has proposed amendments to its Rule 80A that attempt to isolate one potential cause of market volatility, program trading, from other market activity. These amendments would:

—Provide that program trading orders (as defined in the Rule) in component stocks of the S&P 500 Index will be diverted to a separate file, as provided in the Rule, for 15 minutes, on any day that the DJIA declines by 50 points or more from its closing value on the previous trading day; and

—provide that such program trading orders will be diverted to a separate file for 30 minutes on any day that the price of the primary Standard and Poor's 500 Stock Price Index [3] futures contract traded on the Chicago Mercantile Exchange declines 12 points below its closing value on the previous trading day. (*See* SR–NYSE–89–41.)

(v) The Exchange proposed additional amendments to Rule 80A to further minimize excess market volatility that may be associated with index arbitrage activity, and to promote market stabilization during periods of significant movement to the DJIA. (Index arbitrage is defined within the overall definition of program trading in relettered paragraph (f) of Rule 80A.) (*See* SR–NYSE–90–5.)

These amendments as described in paragraph (v) would:

(i) Require that all index arbitrage orders to sell in component stocks of the S&P 500 Stock Price Index be entered with the instruction "sell plus" (meaning that the order could only be executed on a plus or zero plus tick) when the DJIA declines 50 points from its previous trading day's closing value and

(ii) Require that all index arbitrage orders to buy in component stocks of the S&P 500 Stock Price Index be entered with the instruction "buy minus" (meaning that the order could only be executed on a minus or zero minus tick) when the DJIA advances 50 points from its previous trading day's closing value. These requirements would be imposed on all index arbitrage orders, both customer as well as member firm proprietary orders, and would remain in effect for the remainder of the trading day once they have been imposed.

In SR–NYSE–90–5 the Exchange expressed the view that the "buy minus" and "sell plus" requirements for index arbitrage can be expected to have a favorable effect on minimizing excess market volatility and promoting market stabilization by ensuring that index arbitrage orders are executed in a stabilizing manner during periods of significant market volatility and thus cannot lead or accelerate additional movements upward (in the case of buy orders) or downward (in the case of sell orders) once the requirements are put into effect.

The Exchange also believes the beneficial impact of the proposed amendments submitted in SR–NYSE–90–5 can have a significant effect on enhancing investor confidence in the fairness and orderliness of the NYSE market, and has therefore requested that its members and member organizations voluntarily comply with the "buy minus" and "sell plus" requirements during the interim period while the Exchange is seeking Commission approval.

Basket Trading Stabilization Requirement

The Exchange believes it is appropriate to further amend Rule 80A to include a comparable stabilization requirement as to trading in baskets of stocks. When the DJIA is up 50 points or more from its previous close, no purchase of a basket may be made at a price equal to or greater than the aggregate Tier 1 offer in the cash market. When the DJIA is down 50 points or more from its previous close, no sale of a basket may be made at a price equal to or less than the aggregate Tier 1 bid in the cash market. As described in SR–NYSE–89–5 and defined in Rule 803(e), specialists are required to support the ESP market by maintaining "Tier 1" and "Tier 2" quotations in each of the specialty basket stocks. The ESP system automatically establishes the Tier 1 bid and offer for a basket's component stock by periodically "catching" the best published bid and offer in the specialist's market.

The purpose of the proposed basket trading stabilization requirement is to minimize excess volatility that may be associated with ESP trading during periods of significant movement in the DJIA.

These requirements would remain in effect for the remainder of any trading day once they have been imposed. It is anticipated that such a requirement would further minimize excess market volatility that may be associated with basket trading on the Exchange. The Exchange seeks to implement this proposed amendment, set forth in paragraph (e) of Rule 80A, to run on a one-year pilot basis concurrently with the rule amendments submitted in SR–NYSE–89–41 and SR–NYSE–90–5.

2. *Statutory Basis*—The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competiton

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 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 the 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 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

[3] "Standard & Poor's 500 Stock Price Index" and "S&P 500" are service marks of Standard and Poor's Corporation.

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 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 April 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 16, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6840 Filed 3-26-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-845]

Application and Opportunity for Hearing: Procordia Aktiebolag

March 19, 1990.

Notice is hereby given that Procordia Aktiebolag ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain reporting requirements under sections 12(g), 13 and 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than April 13, 1990 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6841 Filed 3-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17387; 811-2745]

Selected Money Market Fund, Inc.; Application for Deregistration

March 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Selected Money Market Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on June 23, 1989 and was amended on March 15, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 230 West Monroe Street, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, at (202) 272-3009, or Max Berueffy, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a dissolved Maryland corporation and an open-end diversified management investment company under the 1940 Act. On May 17, 1977, Applicant filed a Notification of Registration on Form 8B-1 pursuant to section 8(b) of the 1940 Act. On that same date, Applicant filed a registration statement on Form N-1A under the Securities Act of 1933 which was declared effective on September 30, 1977. The initial public offering commenced on November 16, 1977.

2. On January 12, 1989, Applicant's Board of Director's (the "Board") authorized the Plan of Reorganization (the "Reorganization") of Applicant with Selected Capital Preservation Trust (the "Trust") (File No. 811-5240). The Board recommended the Reorganization because: (a) The current small size of the two Portfolios of applicant made operation of the Portfolios expensive and (b) dividend yields were non-competitive with other money market funds. On March 10, 1989, the Trustees of the Trust authorized the Reorganization.

3. On or about April 17, 1989, proxy material was sent too shareholders of the Applicant with respect to the reorganization. At a special meeting held on May 25, 1989, Applicant's shareholders of each portfolio approved the Reorganization by a majority vote.

4. On May 31, 1989, Applicant paid its last dividend to its shareholders in cash. Shareholders of Applicant's General Portfolio were paid $2,777.14 and shareholders of Applicant's Government Portfolio were paid $432. In addition, 49,152.02 shares and 14,035.94 shares were issued as dividend reinvestment for shareholders of the General Portfolio and Government Portfolio, respectively.

5. On June 1, 1989, all of the assets of Applicant's General Portfolio were transferred to the Daily Income Fund of the Trust in return for shares of that Fund at relative net asset value and all of the assets of Applicant's Government Portfolio were transferred to the Trust's Daily Government Fund for shares of that Fund at relative net asset value. No brokerage commission were paid.

6. As of June 1, 1989, Applicant had outstanding 9,363,147.33 General Portfolio shares of $.001 par value and 1,926.574.89 Government Portfolio shares of $.001 par value. All shares has a net asset value of $1.00. Each full and fractional share of beneficial interest of the Applicant then issued and outstanding was converted on that day into an equal number of fractional shares of beneficial interest of the Daily

Income Fund or Daily Government Fund of the Trust.

7. Expenses incurred in connection with the Reorganization were approximately $25,000, of which $14,000 was paid by Applicant and $11,000 paid by the Trust.

8. Applicant has no shareholders, assets or liabilities. Applicant is a dissolved Maryland corporation, and is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6839 Filed 3-26-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[(Declaration of Disaster Loan Area #2409) Amendment #1]

Alabama; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the amendment to the President's declaration, dated February 28, 1990, to include Blount, Cherokee, Cullman, De Kalb, Jackson, and Marshall Counties as a result of damages caused by severe storms, tornadoes, and flooding beginning February 3.

In addition, applications for economic injury from small businesses located in the contiguous counties of Lincoln and Franklin in the State of Tennessee may be filed until the specified date at the previously mentioned location. Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is April 18, 1990, and for economic injury until the close of business on November 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 8, 1990.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-6909 Filed 3-26-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2412, Amendment #1]

Mississippi; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with notification by the Federal Emergency Management Agency of amendment to the President's declaration, dated March 6, 1990 to include Adams, Benton, Jasper, Lawrence, Marshall, Pike, Prentiss, Tippah, Union, and Walthall Counties as a result of damages caused by severe storms, tornadoes, and flooding, and to establish the incidence period as January 24, through and including March 5, 1990.

In addition, applications for economic injury from small businesses located in the contiguous counties of DeSoto, Itawamba, Jefferson, Lee, Marion, and Pontotoc in the State of Mississippi, Tangipahoa, Tensas, and Washington Parishes in the State of Louisiana, and Fayette and Shelby Counties in the State of Tennessee may be filed until the specified date at the previously mentioned location. Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is April 30, 1990, and for economic injury until the close of business on November 28, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 8, 1990.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-6910 Filed 3-26-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #7029]

Texas; Declaration of Disaster Loan Area

Aransas, Bexar, and Kleberg Counties and the contiguous counties of Atascosa, Bandera, Brooks, Calhoun, Comal, Guadalupe, Jim Wells, Kendall, Kenedy, Medina, Nueces, Refugio, San Patricio and Wilson in the State of Texas, constitute an Economic Injury Disaster Loan Area due to damages caused by a freeze which occurred from December 21-24, 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on December 10, 1990 at the address listed below:

Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned to this declaration for economic injury are 702900 for the State of Texas.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: March 8, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-6911 Filed 3-26-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

President's Commission on Aviation Security and Terrorism; Public Hearing

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of public hearing of the President's Commission on Aviation Security and Terrorism.

SUMMARY: The Commission will be holding its fifth public hearing, to which it has invited witnesses from US air carriers to discuss the effectiveness of Federal Aviation Administration security regulations and inspections; what special challenges, logistical and competitive, are faced by US carriers at foreign airports; and whether the public should be notified about threats to civil aviation. Additionally, witnesses from the public and private sectors have been invited to discuss manpower issues, including appropriate training for persons involved in airport and aircraft security against threats of violence. The public is invited to attend.

DATES: The public hearing will be held on Wednesday, April 4, and Thursday, April 5, 1990; each day's session will begin at 10 a.m. ET. The hearing is expected to end midday on Thursday, April 5. Prepared statements of invited witnesses must be received no later than Thursday, March 29, 1990.

ADDRESSES: The public hearing will be held at the Reserve Officers Association, Fifth Floor, One Constitution Avenue, NE., Washington, DC. Persons wishing to submit information to the Commission should use the address immediately below.

FOR FURTHER INFORMATION CONTACT: Harry R. Van Cleve, President's Commission on Aviation Security and Terrorism, 1825 K Street, NW., Suite 519, Washington, DC 20036; telephone (202) 254–3166; FAX (202) 254–3359.

SUPPLEMENTARY INFORMATION: The Commission has already held four public hearings. In November 1989, the Commission heard testimony on how it should carry out its mandate from the President; witnesses included Families of Victims of PanAm 103, which exploded over Scotland in December 1988, and families of victims of the UTA flight that exploded over Niger in September 1989, as well as representatives of various aspects of the aviation industry. In December 1989, the Commission heard from the General Accounting Office and two Federal agencies involved in civil aviation security, counter-terrorism, and related fields. In February 1990, the Commission heard testimony on the research, development, and production of explosive-detection equipment. In March 1990, the Commission heard from Representative Dante B. Fascell, Chairman, Committee on Foreign Affairs, House of Representatives. It also heard from officials of the Department of State and an employee of PanAm on the subject of a public notification of threat information.

Issued in Washington, DC on March 21, 1990.

Harry R. Van Cleve,

Commission General Counsel.

[FR Doc. 90–6898 Filed 3–26–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–90–14]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 16, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 21, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25337.
Petitioner: ERA Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow petitioner's pilots to remove and replace seats when away from the maintenance base.

Docket No.: 25978.
Petitioner: Colorado Springs Airport.
Sections of the FAR Affected: 14 CFR 107.14.
Description of Relief Sought: To exempt petitioner from requirement to install a security controlled access system that meets the requirements of § 107.14.

Docket No.: 26059.
Petitioner: Richard D. Russell.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To allow petitioner to serve as a pilot of an aircraft engaged in air carrier operations under Part 121 after his 60th birthday.

Docket No.: 26154.
Petitioner: City of Los Angeles Department of Fire.
Sections of the FAR Affected: 14 CFR 45.29(b)(3).
Description of Relief Sought: To allow petitioner to operate its six helicopters using 24-inch identification numbers and 3-inch registration markings, instead of the required 12-inch registration markings.

Dispositions of Petitions

Docket No.: 25104.
Petitioner: Robert Haveman Air Charter.
Regulations Affected: 14 CFR 43.3(g).
Description of Relief Sought/Disposition: To allow petitioner's pilots to change the seating configuration on petitioner's Cessna 310K, 401A, and 402B aircraft.
Partial Grant, March 9, 1990, Exemption No. 5159

Docket No.: 25296.
Petitioner: Simmons Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought/Disposition: To extend Exemption No. 4860 that allows petitioner to utilize certain foreign original equipment manufacturers to inspect, repair, and overhaul the components and parts of the Aerospatiale ATR–42 and Short Brothers SD3–60 aircraft operated by petitioner.
Grant, March 9, 1990, Exemption No. 5161

Docket No.: 25656.
Petitioner: Michael S. Musticchio.
Sections of the FAR Affected: 14 CFR 65.71(a)(3).
Description of Relief Sought/Disposition: To extend by 90 days the period during which all prescribed tests must be passed for a mechanic certificate.
Denial, March 9, 1990, Exemption No. 5160

Docket No.: 25902.
Petitioner: Mountain Air Cargo, Inc.
Regulations Affected: 14 CFR 135.225(d).
Description of Relief Sought/Disposition: To allow petitioner to operate C208 aircraft in less than the prescribed visibility and landing minimums with pilots having less than 100 hours of pilot-in-command experience in that type of aircraft.
Denial, February 12, 1990, Exemption No. 5154

Docket No.: 25967.
Petitioner: Judith A. Myers.
Sections of the FAR Affected: 14 CFR 61.129(b)(1)(ii).

Description of Relief Sought/ Disposition: To allow petitioner to work toward her commercial rating while flying her husband to business appointments in her own airplane, one not equipped with retractable gear as specified in the Federal Aviation Regulations.

Denial, March 15, 1990, Exemption No. 5163

Docket No.: 25995.

Petitioner: Whiteco Industries dba Signco Transportation.

Sections of the FAR Affected: 14 CFR 135.251 and Part 121, Appendix I.

Description of Relief Sought/ Disposition: To allow petitioner to continue operations without testing of each of its employees in accordance with the drug testing procedures of Part 121, Appendix I.

Denial, February 27, 1990, Exemption No. 5157

[FR Doc. 90-6861 Filed 3-26-90; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Benton and Washington Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Benton and Washington Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Charles S. Boyd, District Engineer, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201; or John Baber, Environmental Analyst, Environmental Division, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203, Telephone: (501) 569-2281.

SUPPLEMENTARY INFORMATION: FHWA, in cooperation with the Arkansas State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane, divided, partially controlled access facility located on new alignment. The project will serve northwest Arkansas, including Benton and Washington Counties. The proposed project along U.S. 412, from Siloam Springs to Springdale, includes several alternatives based on two new location corridors and varying termini. The proposed improvements would improve the capacity of the existing route and increase regional mobility along a route from the West Coast to the Mississippi River. The approximate length of the project is 15 miles.

U.S. 412, in Arkansas and Oklahoma, is a major commercial and tourist route. The need for this proposed improvement is further emphasized by the tremendous growth occurring in the northwest portion of the State. These improvements along U.S. 412 would provide a four-lane route between the Fayetteville-Springdale urbanized area and Tulsa, Oklahoma.

The western terminus of the proposed improvements will connect to a turnpike continuing on to Tulsa. The eastern terminus of U.S. 412 connects with the U.S. 71 facility currently being constructed as a freeway facility between I-40 in Alma and the Missouri State line.

Alternatives to be considered are: (1) The "Do-Nothing" alternative where roads are constructed according to the regional plan with the exception of the proposed facility; (2) the "Reconstruction" alternative where roads on the regional plan are upgraded to handle traffic forecast for the proposed facility; and (3) the "New Location" alternative considering several different alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations, including conservation groups and groups of individuals who have voiced opposition to the project in the past and to major Arkansas newspapers. Also, a series of public involvement sessions will have been held in a mobile trailer situated directly in the areas to be affected. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues 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.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Charles Boyd,

District Engineer, Little Rock, Arkansas.

[FR Doc. 90-6868 Filed 3-26-90; 8:45 am]
BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 59
Tuesday, March 27, 1990

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).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

March 21, 1990.

TIME AND DATE: 10:00 a.m., Wednesday, March 28, 1990.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:.

1. *Greenwich Collieries, Division of Pennsylvania Mines Corporation,* Docket Nos. PENN 85-188-R, etc. (Issues include whether the judge erred in ruling that orders of withdrawal issued pursuant to section 104(d)(1) of the Mine Act were invalid.)

It was determined by a unanimous vote of Commissioners that this item be considered in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 for Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90-7029 Filed 3-23-90; 10:50 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS.

TIME AND DATE: 11:00 a.m., Monday, April 2, 1990.

PLACE: Mariner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check processing equipment with the Federal Reserve System.

2. Proposals regarding a Federal Reserve Bank's building requirements.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 23, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7128 Filed 3-23-90; 3:24 pm]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, March 29, 1990.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to Public

(1) Oral Argument in Occidental Petroleum Corp. Docket 9205.

Portions Closed to the Public

(2) Executive Session to follow Oral Argument in Occidential Petroleum Corp. Docket 9205.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179, Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 90-7051 Filed 3-23-90; 10:56 am]

BILLING CODE 6750-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 26, April 2, 9, and 16, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 26

Thursday, March 29

10:00 a.m.
Periodic Briefing on Progress of Resolution of Generic Safety Issues (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 30

10:00 a.m.
Periodic Briefing on Status of Activities with the Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting)

Week of April 2—Tentative

Tuesday, April 3

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)

2:00 p.m.
Briefing on Economic Incentive Regulation of Nuclear Power Plans (Public Meeting)

Thursday, April 5

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 9—Tentative

Friday, April 13

10:00 a.m.
Briefing on Risk Based Technical Specifications Program (Public Meeting)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 16—Tentative

Monday, April 16

10:00 a.m.
Briefing on Emergency Planning Rule Change for Standardized Plants (Part 52) (Public Meeting)

2:00 p.m.
Briefing on Status of Nine Mile Point 1 Restart (Public Meeting)

Thursday, April 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

Dated: March 22, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-7112 Filed 3-23-90; 2:14 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 55, No. 59
Tuesday, March 27, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N-021F]

RIN 0905-AA06

Skin Protectant Drug Products for Over-the-Counter Human Use; Fever Blister and Cold Sore Treatment Drug Products

Correction

In proposed rule document 90-2164 beginning on page 3362 in the issue of Wednesday, January 31, 1990, make the following correction:

On page 3366, in the third column, in the first complete paragraph, in the fifth line delete "containing approximately 3 percent tannic acid and the current products."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 348

[Docket No. 76N-301F]

RIN 0905-AA06

External Analgesic Drug Products for Over-the-Counter Human Use; Proposed Rulemaking for Fever Blister and Cold Sore Treatment Drug Products

Correction

In proposed rule document 90-2163 beginning on page 3370 in the issue of Wednesday, January 31, 1990, make the following corrections:

1. On page 3372, in the third column, in the second complete paragraph, in the fourth line "could" should read "cold".

2. In the same paragraph, six lines from its bottom insert "notes" after "agency".

3. On page 3376, in the third column, in the third complete paragraph, 11 lines from its bottom, "prowder" should read "powder".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary (Domestic Finance)

17 CFR Part 401

Implementing Regulations for the Government Securities Act of 1986

Correction

In proposed rule document 90-4771 beginning on page 7733 in the issue of Monday, March 5, 1990, make the following corrections:

1. On page 7735, in the third column, in the first complete paragraph, in the 13th and 27th lines, "§ 4019" should read "§ 401.9".

§ 401.9 [Corrected]

2. On page 7738, in § 401.9(f), in the third column, in the seventh line from the bottom, "401" should read "402".

3. On page 7739, in § 401.9(i), in the first column, in the second line from the bottom, "240-17a7(a)" should read "240.17a-7(a)".

4. On the same page, in the second column, in § 401.9(n), in the second line, "250.15a-6(b)" should read "240.15a-6(b)".

BILLING CODE 1505-01-D

federal register

Tuesday
March 27, 1990

Part II

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 545 and 563

Loans to One Borrower Limitations; Interim Final Rule and Request for Comments

Transactions With Affiliates and Subsidiaries; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545 and 563

[No. 90-498]

RIN 1550-AA27

Loans to One Borrower Limitations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule with request for comment.

SUMMARY: The Office of Thrift Supervision ("OTS" or "Office"), is issuing an Interim Final Rule with request for comment to revise its regulations governing limitations on loans to one borrower to make them consistent with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA" or "Act"), Pub. L. No. 101-73, 103 Stat. 183. FIRREA provides that section 5200 of the Revised Statutes shall apply to savings associations in the same manner and to the same extent as it applies to national banks. FIRREA also provides Special Rules which permit loans for any purpose not to exceed $500,000, and which provide different limits for loans to develop domestic residential housing units and loans to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith ("Special Rules").

This Interim Final Rule incorporates the section 5200 loan limitations, providing more stringent rules where necessary, provides more detailed regulatory implementation of requirements pursuant to the Special Rules and other provisions, and provides that a savings association's investment in the commercial paper and corporate debt securities of one issuer shall be subject to the loans to one borrower limitation. Because the statute incorporates these new requirements, some of which were effective immediately upon enactment, and displaces the preexisting lending limitations, today's rule is effective on publication in the **Federal Register**, and thus is binding on savings associations until a final rule takes effect. The OTS is requesting comment from interested parties on all aspects of this Interim Final Rule prior to the adoption of a final regulation.

DATES: *Effective* March 27, 1990. Comments must be received on or before May 29, 1990.

ADDRESSES: Send comments to: Director, Information Services Section, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 801 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Maxwell, Staff Attorney, (202) 906-6649, Daniel Lonergan, Deputy Director for Opinions, (202) 906-6458, Karen Solomon, Associate Chief Counsel, (202) 906-7240, Regulations and Legislation Division, Office of Chief Counsel; James C. Porter, Financial Analyst, (202) 785-5427, Joseph M. Casey, Senior Analyst, (202) 785-5410, Linda K. Matthias, Policy Analyst, (202) 331-4597, Mary C. Short, Deputy Director for Supervisory Programs, (202) 331-4575, Supervision Policy; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The FIRREA, which was signed into law by the President on August 9, 1989, substantially revises and reorganizes the law governing the operations and supervision of savings associations, including the limitations on lending to a single borrower. Section 301 of FIRREA adds new section 5(u) to the Home Owners' Loan Act ("HOLA"), which establishes more stringent limitations on the amount a savings association may loan to one borrower than previously existed under the Office's (then, the Federal Home Loan Bank Board's ("Bank Board")) loans to one borrower regulations. 12 CFR 563.93.[1] Under the Special Rules provision of section 5(u), however, FIRREA also establishes higher lending limits for loans to develop domestic residential housing units (provided specific requirements are met), higher limits for loans to finance the sale of real property acquired in satisfaction of debts previously contracted, and also permits loans for any purpose not to exceed $500,000 when the association's General Limitation calculation would not otherwise permit a loan in such an amount.

[1] The FIRREA abolished the Federal Home Loan Bank Board (section 401(a)(2)) and amended the HOLA to provide for a new regulatory agency, the Office of Thrift Supervision, whose Director is vested with all of the powers vested in the Federal Home Loan Bank Board or its Chairman prior to FIRREA's enactment that were not abolished or repealed by the Act, or transferred to the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Resolution Trust Corporation, or the Federal Home Loan Mortgage Corporation. As a result of the Office's recodification of its regulations after FIRREA, the former lending limit provision at 12 CFR 563.9-3 now appears at 12 CFR 563.93. 54 FR 49411, 49573 (Nov. 30, 1989). Thus, references in today's rule to the loans to one borrower regulation previously promulgated by the Bank Board will be to 12 CFR 563.93.

Background

Pursuant to its authority as operating head of the Federal Savings and Loan Insurance Corporation under Title IV of the National Housing Act ("NHA"), 12 U.S.C. 1724-30, to issue regulations relating to safe and sound practices of insured institutions, the Bank Board for many years had imposed regulatory limitations on the amount of permissible credit extended to any "one borrower." *See, e.g.*, 28 FR 1629 (Feb. 21, 1963). These regulations were substantially amended in 1983 pursuant to the Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Pub. L. No. 97-320, 96 Stat. 1469. The DIA imposed additional, statutory loans to one borrower requirements with respect to commercial loans, providing that no association could make commercial loans to one borrower in excess of the amount a national bank having an identical total capital and surplus could lend such a borrower. 12 U.S.C. 1464(c)(1)(R) (1988).

The Bank Board implemented this statutory requirement by applying to commercial loans the general, statutory lending limit, that is, 15 percent of unimpaired capital and unimpaired surplus, that the Office of the Comptroller of the Currency ("OCC") applies to national banks. *See* 48 FR 23050 (May 23, 1983); *see also* 12 U.S.C. 84. With respect to commercial lending, therefore, savings associations have for some time been subject to lending limits similar to those applicable to national banks under 12 U.S.C. 84.

This confluence of regulatory approaches to lending limits by the Bank Board and the OCC continued, as the Board amended its lending limit regulations again in 1985, in part to adopt portions of the OCC's "common enterprise" aggregation approach,[2] thus broadening the definition of "one borrower" to encompass loans to separate entities where the expected source of repayment was the same for each person or where two or more otherwise unrelated entities used the loan proceeds jointly to acquire a business enterprise. These 1985 amendments also revised the definition of "outstanding loans" to adopt substantial portions of the Comptroller's definition of "loans and extensions of credit." *See* 50 FR 45089 (Oct. 30, 1985).

[2] Under OCC regulations, loans and extensions of credit to one person will be attributed to other persons where a "common enterprise" is deemed to exist between such persons. The existence of a "common enterprise" will depend upon an evaluation of particular facts and circumstances. *See* 12 CFR 32.5.

With the enactment of FIRREA, an even greater convergence of regulatory approaches has been mandated. FIRREA section 301 adds new section 5(u)(1) to the HOLA; it provides that, "Section 5200 of the Revised Statutes shall apply to savings associations in the same manner and to the same extent as it applies to national banks." [3] The legislative history accompanying this provision suggests that the new limit was effective immediately upon enactment. The Joint Explanatory Statement of the Committee of Conference provides:

> The bill generally makes savings associations subject to the same limit on loans to one borrower as apply to national banks. *The limits are incorporated by reference, and are self-executing.*

H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess., at 408 (1989) (emphasis added). As clear as this language is, however, the incorporation of the national bank lending limitation presents several practical difficulties, and poses numerous interpretive questions. Today's rule seeks to resolve many of these issues and solicits comments from interested parties on all aspects of this new approach.

During the interval between the statute's enactment and the promulgation of this rule, the Office has responded to the numerous issues raised by FIRREA's new requirements by providing interim policy guidance through the issuance of Thrift Bulletins prepared by the Office's policy staff. These documents will be revised or rescinded, as necessary, to comport with the final rule adopted after consideration of comments received in response to this rulemaking.

Frequently, the Office proposes revisions to existing regulations under which savings associations have operated, and under which associations are able to continue operating while the rulemaking process proceeds. FIRREA's "self-executing" statutory incorporation of the Section 5200 lending limitations applicable to national banks and the introduction of new "Special Rules" provisions are atypical in that the statute displaced the prior lending limits while presenting new limitations that required Office clarification. Accordingly, as discussed more specifically below under "XII. Reasons for Adoption of an Interim Final Rule," the OTS is issuing an Interim Final Rule with request for comments. In order to avoid supervisory action, savings associations are required to make lending limit decisions consistent with today's rule in the interim period before a Final Rule is promulgated.

I. The New General Rule: A Lower Limit

FIRREA requires that the 12 U.S.C. 84 lending limitations shall apply to savings associations "in the same manner and to the same extent" as they apply to national banks. First, today's rule replaces the previous regulation set forth under 12 CFR 563.93. With respect to the new general loans to one borrower limitation, today's rule replaces the prior limitation with two new provisions virtually identical to section 12 U.S.C. 84(a)(1) and (a)(2), but which substitute the term "savings association" for the term "national banking association."

The new limitation provides that total loans and extensions of credit to a person outstanding at one time and not fully secured by collateral at least equal in value to the amount of the loan or extension of credit shall not exceed 15 percent of the association's unimpaired capital and unimpaired surplus (the "General Limitation"). The rule also provides, as does section 84(a)(2), that in addition to this 15 percent, total loans and extensions of credit to a person outstanding at one time and fully secured by "readily marketable collateral" shall not exceed 10 percent of the unimpaired capital and unimpaired surplus of the association. Today's rule incorporates the OCC's definition of "readily marketable collateral" set forth at 12 CFR part 32.

The incorporation of these two sections, as well as other section 84 provisions discussed ahead, initially raised questions regarding the definitions to be employed in implementing these new statutory limits, as well as questions regarding the extent to which either the substantive regulations or the interpretive opinions issued by the OCC as to these limitations are binding upon savings associations. The legislative history suggests that these section 84 limits should apply immediately upon enactment to the same extent that they apply to national banks.

It is the Office's view that, in addition to section 84 itself, the statute requires it to apply to savings associations any substantive and procedural regulations and interpretations promulgated by the OCC pursuant to the notice and comment procedures outlined in the Administrative Procedure Act. 5 U.S.C. 551 *et seq.*[4] Thus, the Comptroller's lending limit regulations and the interpretive rules set forth at 12 CFR part 32 are binding upon savings associations. The Office will give substantial weight to the Comptroller's legal opinions interpreting the national bank lending limits, although they have not been published for notice and comment, and will regard them as strong evidence of safe and sound banking practices, but the Office does not regard these opinions as being legally binding on savings associations.

As discussed below, general definitions set forth at 12 CFR part 32 are to be applied by associations in implementing the new statutory limitation, as are other terms employed in the part 32 regulations but defined under other OCC regulations (*e.g.*, the term "unimpaired capital and unimpaired surplus" is defined at 12 CFR 3.100, as discussed *infra*). Today's rule contains a statement to this effect.

It should be noted that this incorporation of the regulations and interpretations codified under part 32 includes the Temporary Rule issued by the Comptroller addressing the lending limit treatment of loan commitments where the association experiences an intervening drop in capital. *See* 53 FR 23752 (June 24, 1988). This June 1988 rule, of course, only applies to loans made on or after FIRREA's date of enactment by an association experiencing a drop in capital. The Comptroller has recently

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[3] The statutory provisions governing national banks' lending limitations are found at 12 U.S.C. 84.

[4] Section 84(d) contains an explicit grant of rulemaking authority to the Comptroller:

> The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section, including rules and regulations to define or further define terms used in this section to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

12 U.S.C. 84(d)(1) (1988). *See also* 135 Cong. Rec. S 10202, S 10206 (daily ed. Aug. 4, 1989) (floor statement of Sen. Riegle).

In addition, FIRREA authorizes the Director to impose "more, stringent restrictions" on a savings association's loans to one borrower when necessary to ensure safety and soundness. 12 U.S.C. 1464(u)(3). In the Office's view, its general rulemaking authority, as set out in section 3(b)(2) and, in particular, with respect to Federal savings associations, in section 4(a)(2) of the HOLA, authorizes it to promulgate regulations implementing its authority to impose "more stringent restrictions." With respect to the FIRREA lending limit provisions, the OCC is the lead regulator for purposes of the general lending limit prescribed for savings associations at section 5(u)(1) because section 5(u)(1) incorporates by reference a statute that both sets lending limits and explicity grants rulemaking authority to the Comptroller. On the other hand, the OCC is not the lead regulator for purposes of the provisions of sections 5(u)(2) and 5(u)(3) because those sections find no analog in the statutory lending limit provisions applicable to national banks and the explicit grant of rulemaking authority to the Comptroller does not apply to them. Thus, the Office concludes that it may rely on its general rulemaking authority to implement sections 5(u)(2) and 5(u)(3).

proposed amendments to its Temporary Rule, 54 FR 30054 (July 18, 1989). Savings associations are well-advised to carefully review these documents.

Of greater significance to savings associations, however, are recently proposed, broad amendments to the OCC's part 32 (and related parts 7 and 3) lending limits, 54 FR 43398 (Oct. 24, 1989). This Office will closely monitor this rulemaking, and recommends that savings associations closely review this OCC proposal. At this time, however, the OTS will not rely on its authority to write more stringent lending limit rules to propose definitions for savings associations different from the OCC's existing part 32 lending limit definitions and aggregation policies (with limited exceptions identified herein). Instead, OTS staff intends to consider revisions made in any final rule issued by the OCC with a view toward amending its own rule if more stringent limitations for savings associations are necessary.

II. General Rule Definitions: Calculating "Unimpaired Capital and Unimpaired Surplus"

A. Applying the Comptroller's Definitions

Because it is the basis for calculating a savings association's lending limit, the meaning of the term "unimpaired capital and unimpaired surplus" is of fundamental importance. Section 5(u) requires the OTS to apply 12 U.S.C. 84 to savings associations "in the same manner and to the same extent as it applies to national banks." The OCC's lending limit regulations, 12 CFR part 32, limit the amount a national bank may lend to one person to an amount not to exceed 15 percent of the bank's unimpaired capital and unimpaired surplus.[5] Because FIRREA requires OTS to adopt the OCC lending limits, savings associations must apply the definition of "unimpaired capital and unimpaired surplus" as it is defined in the OCC's regulations.[6]

Pursuant to § 3.100(a), "capital" includes the amount of common stock and perpetual preferred stock outstanding and unimpaired. Section 3.100(c) defines "surplus" as the sum of: (1) Capital surplus; undivided profits; reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock); net worth certificates issued pursuant to 12 U.S.C. 1823(i) (Federal Deposit Insurance Act); minority interests in consolidated subsidiaries; and allowances for loan and lease losses; minus intangible assets; (2) the lesser of the fair market value or the amortized cost of purchased mortgage servicing rights; (3) mandatory convertible debt to the extent of 20 percent of total capital and surplus; and (4) other mandatory convertible debt, limited life preferred stock and subordinated notes and debentures to the extent set forth in § 3.100(f)(2).

The Office will issue guidance that supplements this rule to assist savings associations in calculating these components of capital and surplus. Specifically, the Office will soon issue a schedule to the Thrift Financial Report to assist savings associations in converting the information set forth in the Report into data from which § 3.100 capital and surplus may be readily calculated.

B. The Treatment of Intangible Assets

The definition of capital and surplus under § 3.100 to be used for lending limit purposes differs in several ways from the capital provisions set forth at section 5(t) of the HOLA, which provide capital adequacy requirements for savings associations. One of the most significant of these differences is the extent to which intangible assets, including goodwill, may be included in an association's capital. Section 5(t) allows certain supervisory goodwill to be phased out of core capital over a period of several years. Section 3.100 is much more restrictive. *Compare* 12 U.S.C. 1464(t) and 12 CFR part 567 with 12 CFR 3.100.

The Comptroller's rules currently require intangible assets other than purchased mortgage servicing rights to be deducted from capital for purposes of determing both a national bank's capital adequacy and its lending limit.

See 12 CFR 3.100(c)(1), 12 CFR 3.2(c)(1)(i).[7] At the time these rules were adopted, however, the OCC promulgated a transition rule for intangible assets. Section 3.3(b) of the Comptroller's regulations sets forth that transition rule; it permits the inclusion in capital of intangible assets purchased prior to April 15, 1985 and accounted for in accordance with the instructions of the OCC.[8] The amount of intangibles that may be included in capital is limited to 25% of the sum of certain capital components.[9] Section 5(t)(3) of the amended HOLA, on the other hand, permits savings associations to phase out the amount of qualifying supervisory goodwill includable in core capital over a five year period ending December 31, 1994, but only for purposes of determining capital adequacy. It is section 5(u), which requires that OTS apply the OCC's regulations, definitions, and interpretations, that governs the capital computation for loans to one borrower purposes. *See* 135 Cong. Rec. S 10206 (August 4, 1989).[10]

Therefore, the transition rule for intangible assets set forth at § 3.3(b) applies to all intangible assets other than purchased mortgage servicing rights, which are specifically included in capital. Other intangible assets, such as core deposit intangibles, goodwill, and favorable leaseholds, are not fully included in capital because they lack the combination of separability, marketability, and certainty of cash flow that a component of capital must be able to provide. *See* 50 FR 10207, 10212 (March 14, 1985). Thus, these other

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[5] The term "unimpaired capital and unimpaired surplus" is not defined under the section 5(t) capital provision for savings associations. In other provisions of the section 5(u) lending limits, however, Congress specifically referenced the section 5(t) capital standards when it so intended (*See* Section 5(u)(2)(A)(ii)(II)). This indicates that Congress intended that OTS apply the OCC definition of "unimpaired capital and unimpaired surplus" to savings associations.

[6] The definition of unimpaired capital and unimpaired surplus at part 32, references part 3, of the OCC's regulations. "Unimpaired capital and unimpaired surplus" is defined at 12 CFR 32.2(c) as being equivalent to the term "capital and surplus" as defined at 12 CFR 7.1100. Section 7.1100 has been superseded by 12 CFR part 3 and the term "capital and surplus" is now specifically defined at 12 CFR 3.100. *See also* 54 FR 43398, 43406 (Oct. 24, 1989).

[7] The OCC has promulgated new, risk-based capital standards, which will begin to apply to national banks as of December 31, 1990, and be fully phased-in as of December 31, 1992. *See* "Risk-Based Capital Guidelines," 54 FR 4168 (Jan. 27, 1989). Those risk-based capital standards will alter the treatment of intangible assets for capital adequacy purposes. First, intangibles grandfathered under the § 3.3(b) provision discussed in text will continue to qualify for grandfathering treatment only until December 31, 1992. After that date, the OCC will require their deduction from Tier 1 capital. 54 FR at 4182. *See also* 54 FR 46394, 46398 (Nov. 3, 1989) (deduction of grandfathered intangibles, after December 31, 1992, for purposes of the leverage limit applicable to national banks). Second, however, the OCC will permit the inclusion in Tier 1 capital of certain intangibles provided they meet a three-part test set forth in the regulation. 54 FR at 4179. The OTS applies an identical three-part test for inclusion of intangibles in core capital, except with regard to those intangibles the treatment of which is specifically prescribed by section 5(t) of the HOLA. 12 CFR 567.5(a)(2).

[8] The transition rule does not cover purchased mortgage servicing rights which are specifically permitted to be included in capital under § 3.2(c)(2) and under the accompanying interpretive rule, § 3.100(c)(2).

[9] *See* 12 CFR 3.2(c)(1).

[10] It should be noted that, although § 3.3(b) provided a transition period during which banks could include certain intangible assets in primary capital, § 3.3(b) does not provide a similar transition period for savings associations. FIRREA requires the OTS to apply the OCC's lending limit regulations to savings associations "in the same manner and to the same extent" as they apply to national banks. Therefore, OTS must apply § 3.3(b) as written, and may not amend this provision to specifically apply to savings associations.

intangible assets are subject to the § 3.3(b) transition period.

Today's rule applies the transition period of § 3.3(b) to savings associations in the same manner and to the same extent it applies to national banks. Therefore, the term "capital and surplus" for purposes of applying the loans to one borrower limitations includes only the intangible assets that meet the requirements set forth at § 3.3(b). A savings association must have purchased the intangible asset prior to April 15, 1985 and accounted for it in accordance with the instructions of the OCC before it may include the asset in its primary capital.[11] If these requirements are met, the intangible asset may be included within primary capital in an amount not to exceed 25 percent of the sum of § 3.2(c)(1). Purchased mortgage servicing rights are the only intangible asset not subject to this transition rule.

C. Net Worth Certificates

Pursuant to 12 CFR 3.2(c)(1) and 3.100(c)(1), a national bank may include in primary capital and surplus net worth certificates issued pursuant to 12 U.S.C. 1823(i). Section 1823(i) provides that the FDIC may, in its sole discretion, increase or maintain the capital of a qualified institution by making periodic purchases of net worth certificates. The Bank Board, prior to enactment of FIRREA, was also authorized to purchase net worth certificates from qualified savings institutions pursuant to 12 U.S.C. 1729(f)(5). This provision was removed by FIRREA at the same time that section 1823(i) was amended to apply to all depository institutions.

Section 1823(i) and former section 1729(f)(5) are substantially identical in their description of the authority of the FDIC and Bank Board, respectively, to purchase net worth certificates from qualified institutions. Therefore, today's rule permits savings associations to include within unimpaired capital and surplus net worth certificates issued pursuant to 12 U.S.C. 1729(f)(5). This provision is made in light of the substantially identical language of sections 1729(f)(5) and 1823(i) and is consistent with the requirement of FIRREA that OTS apply to savings associations the same limitations on the amount that may be loaned to one borrower that apply to national banks. Without this provision, savings associations would not be able to include net worth certificates within capital and surplus since the certificates had been issued pursuant to a statute different from, albeit substantially identical to, section 1823(i). The Office solicits comments on whether savings associations may include within unimpaired capital and unimpaired surplus income capital certificates and mutual capital certificates, which were authorized by former section 1729(f)(6) rather than former section 1729(f)(5).

D. Other Concerns—Intervening Capital Drop

With respect to loans made after the effective date of FIRREA, the Comptroller's June 1988 Temporary Rule with request for comment will be applied to savings associations. 53 FR 23752 (June 24, 1988). This rule can be applied to loans made on or after the effective date of FIRREA by savings associations experiencing a decline in capital. In general, the OCC rule provides relief for banks which have experienced a decline in capital and, hence, their lending limits after entering into loan commitments. The OCC permits a legally binding commitment to advance funds within a bank's lending limit to be treated as a loan made at the time the bank entered into the commitment. Thus, a subsequent decline in lending limits caused by a reduction in the bank's capital would not result in a violation of the lending limits when the commitment is funded. *See* 53 FR 23752, 23753 (June 24, 1988); 54 FR 30054 (July 18, 1989).

III. General Rule: Issues in Applying OCC's Part 32 Regulations.

The statutorily-mandated application of lending limitations that have for some time been applied to, and been understood by, national banks poses many practical and interpretative difficulties for savings associations, which previously have not been generally subject to the OCC limitations. Cognizant of the many uncertainties created by FIRREA's "self-executing" imposition of restrictions without provision for a transition period to enable associations to more gradually resolve such uncertainties, the OTS envisions that many issues will continue to require resolution through OTS legal opinions, OTS Legal Alert Memos, Thrift Bulletins and similar policy issuances, as well as through informal and formal guidance and assistance from the OCC. In short, the Office believes that it cannot, in today's rule, anticipate and address all of the possible concerns raised by these new restrictions.

Section 5(u)(3) provides the Director with the authority "to impose more stringent restrictions" if it is determined that such restrictions are necessary for safety and soundness reasons. Moreover, section 3(b)(2) of the HOLA (as amended by FIRREA section 301) provides that the Director of the OTS "may prescribe such regulations and issue such orders as the Director may determine to be necessary for carrying out [FIRREA] and all laws within the Director's jurisdiction," which, in the agency's view, provides rulemaking authority with respect to the section 5(u)(2) Special Rules. Consistent with its statutory authority, the Office has made a preliminary review of the OCC's lending limit regulations to assess their scope and to determine whether the OTS should, at this time, generally impose more stringent loans to one borrower restriction under the authority of section 5(u)(3). The discussion below is meant to clarify and discuss the applicability of these new limitations, and address particular questions regarding the scope of the new provisions and the appropriate definitions to be employed.

A. Scope

The scope of the Comptroller's lending limit regulations at 12 CFR 32.1(c) and complications generated by the application of this provision to savings associations are specifically addressed in today's rule.

The scope of part 32 extends to "all loans and extensions of credit made by national banks and their domestic operating subsidiaries." 12 CFR 32.1(c). This provision also states that part 32 "does *not* apply to loans made by a national bank to its affiliates (as that term is defined in section (b)(1) of section 23A of the Federal Reserve Act (12 U.S.C. 371c(b)(1)), operating subsidiaries, and Edge Act or Agreement Corporation subsidiaries." *Id.* (emphasis added).

The Office is providing its own "scope" provision for the application of the loans to one borrower limitations to savings associations. A new scope provision is necessary because of differences in terminology employed by this Office and by the OCC. Although terms are employed in the scope of this rule that are different from those employed in part 32.1(c), these differences are not intended to create a disparity in the types of entities to which the two rules apply. In fact, in the Office's view, this scope provision not only brings within the scope of this rule the same types of entities that are within the scope of the OCC rule, but

[11] For more information on the accounting methods employed by the OCC, refer to Banking Circular BC-164, issued on December 29, 1981. In general, BC-164 provides that core deposit intangibles should be amortized over either the estimated average life or the actual life of the core deposits, except that the amortization period cannot exceed 10 years

ensures that there is no regulatory overlap between this lending limit rule and the transactions with affiliates restrictions (*i.e.*, an application of the OCC's scope provision in the rule and the Office's transactions with affiliates restrictions would, in certain circumstances, create a situation where both the lending limit restrictions and the transactions with affiliates restrictions would apply to the same transaction).

Part 32 applies to all loans and extensions of credit by national banks and their domestic operating subsidiaries. 12 CFR 32.1(c). The scope of today's rule extends to loans made by savings associations and by their subsidiaries.

The scope of this rule is intended to complement the scope of the Office's proposed rule governing transactions between savings associations and their affiliates, to be set forth at 12 CFR 563.41 and 563.42. The loans to one borrower rule addresses one type of risk borne by a savings association when it makes loans to third parties: by limiting the amount a savings association may loan to one borrower, the lending limits encourage the association to diversify its loan portfolio. The transactions with affiliates rule, on the other hand, protects a savings association from the risks inherent in transactions between the association and its affiliates, *i.e.*, companies that control the association or are under common control with the association, and certain companies controlled by the association. By limiting the amount of funds available to an affiliate from the association, the transactions with affiliates rule serves as a limitation on the amount an association may indirectly loan to one borrower through an affiliate. Because of the protections in place under the transactions with affiliates rule, the scope of today's rule does not address such loans. The scope of this rule applies only to loans made by savings associations and by their subsidiaries.

(1) *Loans by Subsidiaries.* Prior to enactment of FIRREA, loans made by a savings association and its "service corporation affiliates," as defined at 12 CFR 561.27, to the same borrower were aggregated for purposes of applying the lending limitation pursuant to 12 CFR 563.93(b)(1). In this rule, the term "service corporation affiliate," in § 563.93(b)(1), is replaced with the term "subsidiary." For purposes of this rule, the term "subsidiary" with respect to a savings association means any company controlled by a savings association, the voting stock of which is eligible to be held only by savings associations, that is engaged solely in activities of the type and in the amount that a Federal savings association may directly conduct under section 5(c) of the HOLA.[12]

Under this rule, a service corporation that is a "subsidiary" of a savings association is treated as part of the association for purposes of the loans to one borrower limitations. Service corporations that are not "subsidiaries" are, instead, "affiliates" of savings associations and, as such, are subject to the transaction with affiliates regulations, not the loans to one borrower limitations, with respect to transactions between the service corporation and the savings association. Accordingly, pursuant to this rule, the lending limitations of section 5200 apply to loans made by service corporations that are "subsidiaries" of a savings association, as defined, in the same manner that they apply to loans made by the savings association.

Section 32.1(c) of the OCC regulations provides that all loans and extensions of credit made by national banks and their domestic operating subsidiaries are subject to the loans to one borrower limitation of section 5200. A domestic operating subsidiary is defined as a corporation, at least 80 percent of the voting stock of which is held by the bank, that is engaged in activities which are a part of or incidental to the business of banking. 12 CFR 5.34. By definition, domestic operating subsidiaries of national banks may engage only in the types of activities that a national bank may engage in directly. Today's rule is consistent with the scope of § 32.1(c) in that it applies only to savings associations and their "subsidiaries." A "subsidiary," as defined in this rule, may engage solely in activities that a Federal savings association may directly conduct.

An important distinction between the definition of "subsidiary" in this rule and the OCC definition of "operating subsidiary" is that this rule provides a definition of "control" different from, but when considered in the aggregate with the transactions with affiliates rule, nearly comparable in stringency to that set forth at § 5.34 of the OCC regulations. The reason for this distinction is to avoid the possibility that both the lending limit restrictions and transaction with affiliates restrictions would apply to transactions between the association and certain subsidiaries that are less than 80 percent owned by the association.

The definition in this rule is consistent with the definition set forth in the Office's proposed regulations governing transactions with affiliates. This definition provides that a savings association has "control" over another company when the association owns or controls at least 25 percent of any voting class of securities, controls in any manner the election of a majority of the directors or trustees of another company, or would be deemed to have control pursuant to § 574.4. By contrast, the definition of "control" at 12 CFR 5.34 provides that a national bank must own 80 percent of the voting stock of a corporation in order for the corporation to be an operating subsidiary of the bank.

Under this rule, loans by a "subsidiary" of a savings association to a borrower are subject to the lending limits regardless of whether the parent savings association had loans outstanding or extends a loan to the same borrower. This differs from the prior Bank Board policy, which was set forth in a letter opinion, of not applying the lending limits of § 563.93 to loans made by a service corporation subsidiary unless the parent association also made a loan or had a loan outstanding to the same borrower. The prior policy could result in a situation in which a service corporation of a savings association could extend funds to one borrower without limitation. Under this former analysis, such loans would be subject to the loans to one borrower limitations, however, if the parent association subsequently loaned as little as one dollar to the same borrower. Under today's rule, loans by a subsidiary of a savings association are subject to the loans to one borrower limit even if the parent association does not have a loan outstanding or make a loan to the same borrower. In addition, all loans by a savings association's "subsidiaries" continue to be aggregated with each other and with the association's loans to the same borrower for purposes of applying the lending limits.

For purposes of determining whether loans made by a savings association and its "subsidiaries" comply with the lending limits, an association must aggregate the loans it has made to one borrower with the loans made by its "subsidiaries" to the same borrower. The aggregate amount may not exceed 15 percent of the parent's unimpaired capital and surplus. Where a savings association owns another savings association, the savings association

[12] This definition of the term "subsidiary" is consistent with the definition set forth in this Office's proposed regulations governing transactions between a savings association and its affiliates.

"subsidiary" must not only aggregate its loans with those made by its subsidiaries, but must also aggregate the loans it makes to a borrower with the loans made by its parent to the same borrower to ensure compliance with the limitation based on the parent's capital level. The aggregate amount of loans in this case must not exceed the lesser of 15 percent of the "subsidiary's" unimpaired capital and surplus or 15 percent of the parent association's unimpaired capital and surplus, which is determined on a consolidated basis. If the subsidiary has insufficient capital, it may lend only up to $500,000 in the aggregate to one borrower, regardless of its parent's capital level. In no event, however, may a savings association "subsidiary" make a loan to one borrower that, when aggregated with loans made to the same borrower by its parent, exceeds the parent's lending limit.

The Office solicits comment on this method of calculating the lending limit applicable to a savings association "subsidiary." In particular, the Office solicits comment on whether the loans to one borrower limitation applicable to a savings association "subsidiary" should, in all cases, be based not only on 15 percent of its own unimpaired capital and surplus, but on 15 percent of the parent's unimpaired capital and surplus, calculated on a consolidated basis. Commenters may wish to discuss whether imposing the limitation on a "subsidiary" based only on the parent's capital level constitutes a more economically sound approach to calculating a savings association "subsidiary's" lending limit.

(2) *Loans to Subsidiaries.* Prior to FIRREA, loans made by a savings association to its service corporation subsidiaries were not subject to the loans to one borrower limitations of 12 CFR 563.93. *See* 12 CFR 563.93(b)(2)(ii). Instead, loans from a savings association to its service corporation subsidiaries were subject to applicable limitations on the total amount of investment in service corporations that applied to the association. For example, investments by Federal savings associations in service corporations are governed by 12 CFR 545.74(d)(1) which limits a Federal association's aggregate investment in all service corporations to an amount not to exceed 3 percent of the association's assets.

Section 5(u) of the HOLA requires that the OTS apply the provisions of section 5200 to savings associations in the same manner and to the same extent as they apply to national banks. Loans made by a bank to its subsidiaries, however, are not subject to the lending limit provisions of section 5200. Loans by a bank to its operating subsidiaries are specifically exempted from the scope of § 32.1(c). A bank's investment in subsidiaries other than operating subsidiaries is restricted not by the provisions of section 5200, but by the enabling statute that authorizes the bank to establish the subsidiary. For example, a bank's loans to or investments in bank service corporations are governed by the Bank Service Corporation Act, 12 U.S.C. 1861, which provides that an insured bank may invest not more than 10 percent of paid-in and unimpaired capital and unimpaired surplus in a bank service corporation. No insured bank may invest more than 5 percent of its total assets in bank service corporations.

Because section 5200 does not limit the amount a national bank may loan to its subsidiaries, it likewise does not restrict the amount a savings association may loan to its service corporation subsidiaries. Instead, such loans continue to be subject to applicable limitations, such as the limitation on the total amount a savings association may invest in service corporations set forth at 12 CFR 545.74, and if the service corporation is an "affiliate," the transactions with affiliates rules, pursuant to section 11 of the HOLA.

(3) *Loans to Affiliates.* Pursuant to 12 CFR 32.1(c), loans and extensions of credit by a national bank to its "affiliates," as defined in paragraph (b)(1) of section 23A of the Federal Reserve Act (12 U.S.C. 371c(b)(1)), are excluded from the scope of the loans to one borrower limitations that apply to national banks. This rule likewise excludes from the scope of the loans to one borrower limitations loans made by a savings association or its "subsidiaries" to an "affiliate" of the savings association.

As noted previously, certain savings association service corporations are deemed "subsidiaries" under the rule, whereas others are considered "affiliates." In this regard, a loan from a savings association or a service corporation that is a "subsidiary" of the association to a service corporation that is an "affiliate" of a savings association will be subject to the transactions with affiliates rule. Such loans are subject to the applicable restrictions set forth in the Federal Reserve Act and the additional restrictions set forth in this Office's proposed transactions with affiliates regulations set forth at 12 CFR 563.41 and 563.42, as proposed. However, a loan from an association or "subsidiary" to another "subsidiary" would be covered by neither the transaction with affiliates rules nor the loans to one borrower limitations.

(4) *Loans by Affiliates.* As noted previously, the scope of this rule does not extend to loans made by "affiliates" of a savings association. Under this rule, an "affiliate" of a savings association is defined as any company that controls the savings association, any other company that is controlled by the company that controls the association and any company controlled by a savings association that is not deemed a "subsidiary" of the association under this rule. In general, a company controlled by a savings association is deemed a "subsidiary" if it is engaged solely in activities of the type and in the amount that a Federal savings association may directly conduct under section 5(c) of the HOLA.

Loans by "affiliates" of savings associations are not subject to the loans to one borrower restrictions. In particular, funds loaned, advanced or contributed by a savings association to a service corporation that is an "affiliate," which are then loaned by the "affiliate" to one borrower, are not subject to the loans to one borrower restriction. In this regard, although this rule does not limit the loans an "affiliate" could make to one borrower, the transactions with affiliates regulations limit the funds available to an "affiliate" from the savings association that such affiliate may ultimately loan to a third party.

B. Definitions; General Considerations

Because FIRREA provides that the section 84 lending limitations and regulations promulgated consistent with those limits (whether they are legislative or interpretive rules), are to apply to savings associations in the same manner and to the same extent that they apply to national banks, today's rule provides that the OCC's part 32 regulatory definitions are to apply to savings associations as well. This, of course, includes definitions of the terms "unimpaired capital and unimpaired surplus," "loans and extensions of credit," and "person." Just as the Office has been concerned to reconcile differences between the scope of the two agencies' lending limit regulations, however, the Office has similarly been concerned that the OCC's definitions may result in "coverage gaps" or instances where relationships or extensions of credit that were formerly addressed under § 563.93 will be unaddressed or less stringently regulated under the OCC's definitions.

For this reason, in the Office's recodification of its prior loans to one borrower regulation pursuant to its comprehensive recodification of regulations after FIRREA, 54 FR 49411, 49573 (Nov. 30, 1989), § 563.93 was revised to include an introductory sentence indicating that, in addition to the lending limit provisions of § 5(u), associations were also required to apply any requirements set forth under the former § 563.93 provision that were more stringent than the standards of section 5(u). Today's rule dispenses with this interim guidance and generally requires only that savings associations follow the OCC's lending limit provisions. In general, today's rule does not retain the requirements set forth under § 563.93; in a few instances, however, the Office is exercising its § 5(u)(3) authority to impose more stringent restrictions.

Although § 563.93 is not retained generally, as is described in more detail below, a few specific elements of the § 563.93 rule have been retained. Today's rule contains a revised definition of "person" consistent with former § 563.93, as well as revisions providing a clearer aggregation treatment for loans or extensions of credit involving limited partners and partnerships. Otherwise, the provisions of § 563.93, including the definitions and aggregation policies outlined thereunder, are *not* carried forward in today's rule, and are thus not to be applied by savings associations.

As was noted above, the OTS and the OCC have moved much closer in their regulatory approaches to lending limitations in recent years. For this reason, many of the concepts underlying the OCC's definitions of "loans and extensions of credit" and "contractual commitment to advance funds," as well as its loan aggregation policies under § 32.5, had been incorporated in the former § 563.93 definitions of "outstanding loans," "one borrower," "outstanding commercial loans," and "person." Accordingly, OTS staff does not anticipate any significant disparity in coverage.

Nevertheless, staff is in the process of carefully reviewing the substance and scope of the OCC's definitions and legal opinions interpreting these provisions. In particular, staff is reviewing the definitions of "loans and extensions of credit" and "contractual commitment to advance funds," as well as the OCC's loan aggregation or "combination" policies, as set forth under §§ 32.2, 32.5, Interpretations 32.101–111 (particularly Interpretations 32.106 and 32.107), and relevant Interpretations under 12 CFR part 7. *See also* 12 CFR part 3. As mentioned above, the Office is also closely monitoring the recently proposed revisions to the OCC lending limit regulations. *See* 54 FR 43398 (Oct. 24, 1989). After reviewing this OCC proposal and considering any revisions made in any Final Rule issued by the OCC, the Office will issue further guidance to the extent it believes any more stringent limitations for savings associations may be necessary.

Until such time as the OCC has completed its rulemaking, savings associations must comply with the 12 CFR part 32 definitions and aggregation rules as presently codified, with the minor revisions contained in today's rule. In formulating comments to today's rule, and to assist OTS staff in reviewing the stringency of the OCC's definitions and provisions, associations are encouraged to address the following issues:

(1) *Loans and extensions of credit.* The part 32 definition of "loans and extensions of credit" is comparable to, and to a significant extent identical to, the term "outstanding loans" used in the Bank Board's loans to one borrower regulation. The OCC term also incorporates another term, "contractual commitment to advance funds," which includes items that are also addressed in the § 563.93 term "outstanding loans."

The Office is, however, specifically soliciting comment with respect to the following items that were encompassed by, or excluded from, the § 563.93 definition of "outstanding loans," which the Office believes may receive different treatment under the Comptroller's rules than they did under § 563.93:

- Interest due and unpaid less repayments;
- Funds a savings association has an obligation to advance under an executed promissory note, unless the loan is subject to a legally binding overline purchase commitment of another person;
- Credit extended in the form of finance leases satisfying the criteria set forth in 12 CFR 545.53 and 545.78;
- A loan or participation interest sold without recourse;
- A loan secured by a first lien or real estate subject to an annual contributions contract under former section 23 of the United States Housing Act of 1937, as amended; and
- A loan on the security of an institution's deposit accounts, or a deposit or a loan of unsecured day(s) funds described in § 563.96.

(2) *Definition of "Person"/"One Borrower"/ "Common Enterprise."* Today's rule references the OCC's definition of the term "person" which is almost identical to the term "person" used in former § 563.93(a)(5). In promulgating a definition of "person" in 1985, the Bank Board stated its specific intent to adopt the OCC's definition of "person" at 12 CFR 32.2(b). 50 FR 45089, 45094 (Oct. 30, 1985). Without discussion, however, the Bank Board added the term "financial institution" to the definition. This latter term, presently defined at 12 CFR 561.19, merely references the definition of "depository institution" set forth in the Federal Deposit Insurance Act at 12 U.S.C. 1813(c)(1). Today's rule incorporates "financial institution" within the definition of "person." The OTS specifically solicits comment on the inclusion of this term.

Savings associations are also asked specifically to review and consider § 32.5, addressing the aggregation of loans to separate borrowers. Under this provision, the OCC has set forth its "common enterprise" test for determining when loans made to one entity should be aggregated with loans made to another for purposes of applying lending limitations. Although the prior § 563.93 limitations incorporated many of the elements of this "common enterprise" approach, there were several differences. For instance, the Office is particularly concerned that the aggregation treatment of loans involving limited partners may not be as strict as the § 563.93 treatment, in that loans to limited partners may not, under the Comptroller's rules, be attributed to the partnership. This result is different from the result under § 563.93 which, in many instances, required aggregation in these circumstances. It is likely that the OCC would also not require aggregation in the converse fact situation, that is, loans to partnerships might not be attributed to limited partners—or to other partnerships of which the limited partner is a member—to the extent required under the prior rule.

The Office's staff will be looking at these areas in particular, in addition to other aggregation policies, to determine if savings associations should be subject to stricter aggregation treatment. However, until this issue is resolved in a final rule after thorough consideration of comments, the aggregation treatment for loans involving limited partners that existed under the prior § 563.93 rule is retained and applies to savings associations in light of the Office's view that this aggregation approach is more stringent and provides a clearer standard for determining when loans involving limited partners and partnerships require aggregation. This

aggregation treatment, which is already familiar to savings associations, provides a 10 percent ownership threshold for limited partners before aggregation is triggered.

The OTS is presently reviewing the part 32 lending limit provisions to determine whether more stringent restrictions are necessary for savings associations. Because the OTS will accord appropriate effect to any final revisions adopted by the OCC, the Office suggests that savings associations should comment on rules in progress at both the OTS and the OCC. First, commenters are asked to address provisions contained in today's rule. Second, commenters are encouraged to address any regulatory changes contemplated by the OCC in its recent Notice of Proposed Rulemaking, 54 FR 43398 (Oct. 24, 1989), and to address particularly the extent to which the OTS should adopt provisions more stringent than the existing or proposed part 32 provisions.

IV. General Rule: Exceptions to the Section 84 Limits

Today's rule specifically incorporates the exceptions to the lending limitations set forth under 12 CFR part 32, which generally restate the lending limit exceptions expressed in the statute at 12 U.S.C. 84(c). These exceptions have been applicable to savings associations under the commercial loans to one borrower limitation at § 563.93 since 1983 and should be familiar to associations. The OTS solicits comment on any issues addressed under section 84(c) or 12 CFR part 32.

V. Implementation of the Special Rules Provisions

A. Special Rule: The $500,000 Minimum

In today's rule, the Office provides regulations to implement the Special Rules provisions set forth under new section 5(u)(2) of the HOLA. Unlike the section 5(u)(1) General Limitation, however, the Special Rules provisions have no OCC analog. Thus, this is a new section specifically governing loans by savings associations.

These regulatory provisions are issued pursuant to the Office's authority under section 3(b)(2) of the HOLA, which provides that the Director of the OTS "may prescribe such regulations and issue such orders as the Director may determine to be necessary for carrying out this Act and all other laws within the Director's jurisdiction." 12 U.S.C. 1462a(b)(2); *See also* 12 U.S.C. 1463(a)(2). The Office believes that several issues are left unresolved after a close reading of the Special Rules provision of the statute and after a thorough review of FIRREA's legislative history. These issues include the interaction of these Special Rules limitations with the General Limitation set forth in 12 U.S.C. 84(a) (1) and (2), as well as the definition and meaning of several of the terms in this section.

Section 5(u)(2) provides that "notwithstanding" the General Limitation, a savings association may make loans to one borrower under one of two enumerated clauses: The first clause provides for loans for any purpose not to exceed $500,000; the second clause provides for loans to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus. From a review of the statute and legislative history, the Office does not believe that it was Congress's intent, nor is it consistent with safe and sound lending practice, to permit savings associations either: (a) To always make an additional loan of as much as $500,000 for any purpose over and above the General Limitation of 15 percent of unimpaired capital and surplus; or (b) to lend, in addition to the General Limitation amount, a full 30 percent or $30,000,000 to develop domestic residential housing units. Therefore, today's rule provides that loans made under either of these clauses may not be made in addition to the General Limitation of 15 percent of unimpaired capital and surplus.

This position is consistent with policy established under the Bank Board's prior loans to one borrower regulation. Section 563.93 imposed an aggregate lending limitation of the lesser of 10 percent of an insured institution's withdrawable accounts or an amount equal to the institution's regulatory capital. 12 CFR 563.93(b)(1). The regulation also provided that, despite this limitation, loans to one borrower could be made in excess of this limit (*i.e.*, as an alternate to this limit) provided that the sum of the institution's loans to one borrower did not exceed $500,000. The Board was of the view that "an alternative ceiling of $500,000 will permit more troubled institutions to make sizable loans that will help restore them to profitability." *See* 48 FR 23052 (May 23, 1983). In the agency's view, the $500,000 limit for loans for any purpose in section 5(u)(2) of the HOLA is intended to achieve the same result.

Thus, under today's rule, where a savings association's application of the General Limitation's 15 percent formula would result in that association only being able to lend an amount less than $500,000, the Special Rules paragraph (u)(2)(A)(i) will still enable the association to make total loans to one person, for any purpose, not to exceed $500,000. If applying the General Limitation's 15 percent formula renders a lending limit greater than $500,000, the association would naturally apply this greater amount, and the $500,000 loan limit for any purpose may not be employed. In short, if the General Limitation permits loans to one borrower in excess of $500,000, the section 5(u)(2)(A)(i) $500,000 exception is simply not relevant.[13]

Today's rule contains language clarifying that an association may employ this $500,000 exception for loans for any purpose to lend up to $500,000 to one borrower, even though such a loan may exceed the association's General Limitation. Thus, if an association's General Limitation calculation results in a $400,000 limit, the association may nevertheless lend up to $500,000 to Borrower A. If the association's capital position subsequently improves and its General Limitation calculation thereby increases to $600,000, the association may not lend an additional $600,000 to Borrower A. The Association may, however, lend an additional $100,000 to Borrower A, which would make the aggregate amount of outstanding loans owed to the association by Borrower A equal to the association's General Limitation of $600,000.

B. Special Rule for Loans to Develop Domestic Residential Housing Units

The same "notwithstanding" language that introduces the $500,000 exception similarly introduces the residential housing exception. Consistent with the Office's interpretation of this language in that context, today's rule contains language clarifying that the $30,000,000 or 30 percent of unimpaired capital and unimpaired surplus limit for loans to develop domestic residential housing units is not in addition to the General Limitation of 15 percent of unimpaired capital and unimpaired surplus, as well as language that clarifies the operation of this Special Rule.

As stated in today's rule, an association's ability to make loans to develop domestic residential housing units includes amounts loaned to a given "one borrower" under the General Limitation. For example, assume that

[13] It should be noted that, unlike the prior section 563.93 limitation which provided for a periodic, inflationary adjustment of the $500,000 limit in response to fluctuations in the Consumer Price Index, FIRREA does not explicitly provide for such an adjustment. For this reason, Thrift Bulletin 24, which addressed this periodic inflationary adjustment, will be rescinded.

Association A makes a loan to Borrower B in the amount of its General Limitation of $800,000 (15 percent). The residential housing exception does not permit Association A to lend an additional 30 percent (or $1,600,000) to Borrower B. The exception permits Association A to lend only an additional $800,000 to Borrower B, for an aggregate total of $1,600,000 (30 percent). Moreover, the extent to which Association A has availed itself of the additional 10 percent of unimpaired capital and unimpaired surplus limitation for loans fully secured by readily marketable collateral to make loans to Borrower B must also be subtracted from the $30,000,000 or 30 percent limit provided in the Special Rule.

Therefore, if a savings association avails itself of the residential housing exception, the exception's 30 percent or $30,000,000 limitation will serve as the uppermost limitation on lending to any one borrower. Moreover, it will serve as the uppermost limitation for lending to one borrower even if the full 15 percent of the association's General Limitation is applied entirely to commercial loans—the exception would permit only an additional 15 percent for loans to that borrower to develop domestic residential housing units. Of course, if an association does not avail itself of this exception, the limitation on loans to one borrower will simply be the General Limitation.[14] An interpretation appended to today's rule illustrates the operation of this higher lending limit.

Today's rule also sets forth a definition of the term "to develop domestic residential housing units." Neither the statute nor its legislative history provides guidance with respect to the definition of this term. Due to both the Office's and the industry's familiarity with the term "residential real estate" set forth under OTS regulation 12 CFR 541.29, the Office is proposing this definition as the appropriate reference for determining the meaning of "residential housing unit" under FIRREA's new lending limitation. As presently defined, this term includes homes (including condominiums and cooperatives), combinations of homes and business property, other real estate used for primarily residential purposes other than a home (but which may include homes), combinations of such real estate and business property involving only minor business use, farm residences and combinations of farm residences and commercial farm real estate, property to be improved by the construction of such structures, or leasehold interests in the above real estate.

In applying this definition, associations will also be required to apply the present regulatory definitions of terms included within the § 541.29 definition of residential real estate, to include the definitions of "home" (§ 541.14), "combination of home and business property" (§ 541.4), "combination of residential real estate and business property involving only minor or incidental business use" (§ 541.3), and "single family dwelling" (541.20). The term "domestic" as used in this section includes units located within the geographic area where OTS-regulated savings associations are chartered. This includes the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

The rule defines the term "to develop" to include the various combinations of phases necessary to produce housing units as an end product. This includes: (1) Acquisition, development, and construction; (2) development and construction; (3) construction; (4) rehabilitation; or (5) conversion. It is crucial that domestic residential housing units be the end product; the mere acquisition of real estate for holding or for later developing will not fulfill the definition for purposes of this Special Rule. Permanent financing of either individual units within a development or of a multi-unit complex is permissible provided that the financing is related to any of the aforementioned five combinations of phases. Permanent financing of existing housing units, whether single-family or multi-family, does not serve the purpose of the Special Rule and, therefore, is not excepted from the General Limitation.

In order for an association to avail itself of the residential housing unit Special Rule, the association must satisfy five prerequisites that are set forth in the statute and which have been reproduced in today's proposed regulation. The first of these prerequisites is that the purchase price (cash or cash equivalent) of each single family dwelling unit, the development of which is financed under the residential housing unit exception, does not exceed $500,000.

The term "single family dwelling unit" is defined presently under OTS regulation § 541.20 as "a structure designed for residential use by one family, or a unit so designed, whose owner owns, directly or through a non-profit cooperative housing organization, an undivided interest in the underlying real estate, including property owned in common with others which contributes to the use or enjoyment of the structure or unit." This existing definition is familiar to savings associations and is to be applied under the new section 5(u).

The Office has received several inquiries concerning the $500,000 purchase price requirement. Although legislative history provides little guidance on this issue, it is the Office's view that this statutory requirement is to apply literally, and that the actual final sales or purchase price of each single family dwelling unit financed under this clause cannot exceed $500,000 (cash or cash equivalent). However, the Office solicits comment identifying specific circumstances or facts that could complicate or make such a requirement difficult to administer.

The second prerequisite to the use of the 30 percent or $30,000,000 exception for loans to develop domestic residential housing units is that the savings association be, and continue to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of the HOLA, as amended. The term "fully phased-in capital standards" is defined as the standards that will be in effect as of January 1, 1995, at the expiration of all statutory and regulatory phase-in requirements set forth in 12 U.S.C. 1464(t) and 12 CFR 567.2, 567.5, and 567.9. If an association falls below this capital requirement, its authority to avail itself of the exception ceases; the Office will require that the association seek another order from the Director or his designee under section 5(u)(2)(A)(ii)(III) should the association return to compliance.[15] The OCC's "falling capital" policies set forth in the June 1988 Temporary Rule with request for comment, 53 FR 23752 (June 24, 1988), and the July 1989 Notice of Proposed Rulemaking, 54 FR 30054 (July 18, 1989), do not apply in this Special Rules context (i.e., compliance with the fully

[14] An association might not wish to avail itself of the residential development exception if its otherwise applicable General Limitation would be higher than the limit provided by the exception. For example, an association with a General Limitation higher than $30,000,000 would likely not wish to avail itself of the exception, since the $30,000,000 figure would operate as the uppermost limitation for all lending to one borrower if the residential exception were employed.

[15] If the association falls out of compliance with this capital requirement it can no longer avail itself of the lending limit for domestic residential housing unless and until it applies for and receives a new order from the Director. However, the Office will permit associations to continue funding a legally binding loan commitment made under section 5(u)(2)(A)(ii) if the association should fall out of compliance with its fully phased-in capital requirement, provided such binding commitment to the borrower was made when the association was in compliance.

phased-in capital under section 5(t) must be maintained).

The third prerequisite to the exception for loans to develop residential housing units is that the Director, by order, permit the savings association to avail itself of the higher limit. Further OTS guidance with respect to such orders is provided in Regulatory Bulletin *TBA*, as well as OTS Order No. *TBA*.

Such orders, which do not constitute a "waiver" of the loans to one borrower limitation but merely constitute permission to use the section 5(u)(2)(A)(ii) Special Rule, may contain additional requirements or set forth additional conditions or restrictions governing the savings association's exercise of the exceptional residential lending authority to one borrower. Moreover, the Director, or those agency officials to whom the Director delegates the authority to issue such orders, reserve(s) the right to rescind any such order, as well as the authority to generally impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the association under HOLA section 5(u)(3), as added by FIRREA.

The fourth prerequisite to the use of the additional lending limit for residential housing development is that all loans made under the $30,000,000 housing development exception, to all borrowers, may not in the aggregate exceed 150 percent of the saving association's unimpaired capital and surplus. The statute specifically states that this 150 percent limitation applies to "loans made under this clause." The Office interprets this provision to mean loans made under the exceptional authority of amended section 5(u)(2)(A)(ii), which provides for the maximum lending limit of 30 percent or $30,000,000 for the development of domestic residential housing units. Thus, neither loans made under the $500,000 exception for any purpose under section 5(u)(2)(A)(i), nor loans made under the authority of the General Limitation under section 5(u)(1) fall within this 150 percent limitation.

The following example illustrates the operation of the 150 percent limitation. In short, the example illustrates how a savings association might allocate loans that it has made to three different borrowers under the General Limitation and under the Special Rule. The General Limitation limits an association's loans to one borrower to 15 percent of unimpaired capital and unimpaired surplus, as reflected in the third column of the following table. Under the facts of each example below, the association has exceeded the 15 percent limitation, thus requiring that the association properly allocate loans in excess of that limit into the Special Rules category for residential development:

Borrower	Total loans—percent of unimpaired capital & unimpaired surplus	Percent under section 5(u)(1) general rule	Percent under section 5(u)(2)(A) special rule
A	20	15	5
B	26	15	11
C	30	15	15
Total percent counting towards the 150 percent limit			31
Total percent of remaining permissible lending to all borrowers under section 5(u)(2)(A) 150 percent limit			119

Finally, the fifth prerequisite to a savings association's use of the domestic residential housing exception to the General Limitation is that loans made by an association under this section must comply with all applicable loan-to-value requirements. In the Office's view, the requirement to adhere to "all applicable" loan-to-value requirements requires that all associations seeking to avail themselves of this exceptional lending authority apply the loan-to-value requirements applicable to Federally chartered savings associations. *See* 12 CFR 545.32(d). In light of the fact that this is exceptional lending authority greater than the General Limitation applicable to national banks, this uniform requirement will help to ensure that in providing this additional lending authority to promote the development of domestic residential housing units, the Office will not be approving disparately higher levels of risk concentration that could result from the application of differing loan-to-value requirements of many jurisdictions. The Office solicits specific comment on the application of these loan-to-value requirements.

VI. Special Rule: Loans to Facilitate the Sale of Real Estate Owned

Section 5(u)(2)(B) also provides that a savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith shall not exceed 50 percent of the savings association's unimpaired capital and unimpaired surplus. Section 563.93(d)(4) of today's rule sets forth a definition of the term "loan," as well as a more restrictive unimpaired capital and unimpaired surplus limitation, in an effort to ensure consistency with policies of the OCC with respect to the disposition of association assets.

Significantly, today's rule establishes a definition of the term "loans" as used in the statute's phrase "loans to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith," which is to be used solely for purposes of these new lending limits. As set forth in the rule, this term does not include an association's financing of the sale of such real property acquired where the association merely takes a purchase money mortgage note from the purchaser. This treatment of purchase money mortgages taken through the sale of real estate acquired is consistent with the treatment the Comptroller applies to such financings under section 84. In written interpretations, the OCC has historically excluded such financings to facilitate the sale of other real estate owned from the ambit of the section 84 lending limits, although loans (*i.e.*, new funds) extended to a purchaser to improve such property must comply with section 84.

This provision will serve to establish lending limit parity between savings associations and national banks with respect to such financings of real estate owned. If purchase money note financing was not excluded from the scope of this limitation, savings associations would clearly be disadvantaged, since such financings by national banks would not be covered by

the section 84 lending limitations with respect to savings association, while similar financings by savings associations would ostensibly be subject to the statutory 50 percent limitation.[16]

Today's rule thus provides that the term "loans," as used in section 5(u)(2)(B), does not include an association's financing of the sale of such acquired property where the association merely takes a purchase money mortgage note from the purchaser, provided: (1) No new funds are advanced by the association to the borrower; and (2) the association is not placed in a more detrimental position as a result of the sale (*i.e.*, the association is not in a worse position holding the note than holding the real estate). These requirements will demand a more fact-specific inquiry by the association, as well as by the Office's examination staff, and will necessitate that the association provide appropriate evidence that these requirements have been considered and met in each transaction.

Provided these requirements are met, such financings will not constitute a loan to finance the sale of real property acquired as referenced under section 5(u)(2)(B), nor a loan or extension of credit as defined under 12 CFR part 32. However, all other financings or loans to facilitate the sale of such foreclosed property, as well as any loans that constitute the advancement of new funds (*e.g.*, a loan to a purchaser to make improvements) will be subject to appropriate lending limitations.

Although the Office believes that this action is necessary to ensure that its lending limit treatment is consistent with that of the OCC with respect to the sale of such assets, the Office remains concerned that the 50 percent limitation set forth in section 5(u)(2)(B) of FIRREA is not sufficiently restrictive to ensure safe and sound policy. For example, while a national bank's purchase money note financing of the sale of a bank asset would not be subject to the 15 percent of unimpaired capital and unimpaired surplus limitation set forth at section 84, the bank's extension of new money would fall within this 15 percent limitation. Under section 5(u)(2)(B), as interpreted in today's rule, similar financing by a savings association would likewise not fall within the lending limitation, but an extension of new money in a sale of association real property would be governed by a 50 percent limitation. In short, the statute establishes an upper limit on the amount of new money a savings association may loan to one borrower in connection with the sale of association real property that is more than three times greater than the limit applicable to a national bank's extension of new money.

The Office believes that, in order to protect the safety and soundness of savings associations, it should apply a more stringent limitation on the amount an association may loan to one borrower in connection with the financing of the sale of real property acquired in satisfaction of debts previously contracted than the absolute maximum permitted under section 5(u)(2)(B). Thus, today's rule is consistent with the OCC's rule with respect to the sale of such assets and provides that a savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith shall not exceed the General Limitation of 15 percent of unimpaired capital and unimpaired surplus. Thus, the extension of new money and all other loans (again, specified purchase money note financing is excluded) to one borrower to finance the sale of such association real estate will only be permitted up to a limit identical to the limit applicable to national banks.

This 15 percent limitation is not in addition to the General Limitation of 15 percent of unimpaired capital and unimpaired surplus; in short, such loans to finance the sale of association real property, when aggregated with all other loans to that borrower, cannot exceed the General Limitation.

VII. Investment Securities

Previously, a Federal association could lawfully invest in, sell, or hold commercial paper and corporate debt securities of any one issuer consistent with specific limitations identified at 12 CFR 545.75. Section 545.75(b)(3) provides that an association's total investments in the commercial paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, together with commercial loans, are subject to the loans to one borrower limitations set forth at 12 CFR 563.93(b)(2). Today's rule retains the limitation set forth in § 563.93(b)(2) as the limitation on the amount a savings association may invest in the commercial paper and corporate debt securities of any one issuer.

A. Corporate Debt Securities and Commercial Paper

The extent to which a national bank may invest in securities is governed by 12 U.S.C. 24, which provides that a national bank may purchase for its own account investment securities of any one obligor or maker in an amount not to exceed 10 percent of the bank's capital stock paid in and unimpaired and 10 percent of its unimpaired surplus. The OCC's regulations define an investment security as a marketable obligation in the form of a bond, note, or debenture which is commonly referred to as an investment security. Not included in this definition are investments which are predominantly speculative in nature. 12 CFR 1.3(b).

This limitation on the amount of investment securities a national bank may purchase for its own account is separate from the limitation on the amount the bank may loan to one borrower set forth at 12 U.S.C. 84. Generally, for purposes of distinguishing between a "loan" for purposes of 12 U.S.C. 84 and an "investment security" for purposes of 12 U.S.C. 24, the OCC determines whether a "loan" is the result of direct negotiations between a borrower and a lender, or the lender's agent, and whether the loan terms are specialized to meet the interests of the lender and the needs of the borrower. An "investment security," on the other hand, typically has standardized terms which can be compared to the terms of other market offerings. Loans made by a national bank are subject to the section 84 lending limits while a bank's purchase of investment securities is subject to section 24. FIRREA applies to savings associations only the loans to one borrower limitation of section 84 and does not apply the section 24 limitation on the amount of investment securities of one issuer a national bank may purchase.

[16] The OCC has stated that the taking of a purchase money mortgage note to facilitate the sale of any bank asset (not just real property) would not fall within the section 84 limitations, provided the above conditions are met. Thus, a less careful reading of the section 5(u)(3) limitation as applying to financings where the association merely takes a purchase money note without an advance of new funds would lead to the following incongruous result: financings to facilitate the sale of real property would fall within the section 5(u)(2)(B) limitation, similar financings to facilitate the sale of other bank assets would fall within neither the 50 percent limitation nor the General Limitation. (The section 5(u)(2)(B) Special Rule only addresses real property assets held by the association; other assets held by the association fall within the General Limitation (*i.e.*, section 84).) (Because the OCC has stated that the purchase note financing of bank assets falls outside section 84, real property financings would have a 50 percent limitation, while other bank asset financings would have no loans to one borrower limitation.) Such a less careful reading of the statute would produce a result that is both illogical and inconsistent with the treatment of such financings by the OCC.

In order to protect the safety and soundness of savings associations, however, the Office has retained the prior limitation on the amount a savings association may invest in the corporate debt securities of any one issuer. Accordingly, the limitation on the amount of commercial loans a savings association may make to one borrower formerly set forth at § 563.93(b)(2) continues as the applicable limit on the amount an association may invest in the corporate debt securities of a single issuer. Under this rule, a savings association must add any loans it has made to a borrower with any corporate debt securities held by the association that were issued by the same borrower and the aggregate amount is subject to the association's General Limitation.

The provision in today's rule is identical to the prior Bank Board limitation on the amount of corporate debt securities of any one issuer a savings association may hold. Prior to FIRREA, the Bank Board's lending limits consisted of an aggregate limit and a commercial limit, with the OCC's lending limitation at 12 U.S.C. 84 serving as the commercial limit. A savings association's investment in corporate debt securities was deemed to be an "outstanding commercial loan" as defined under § 563.93(a)(3)(i). Consequently, § 545.75(b)(3) incorporated the commercial loan limitation under § 563.93 as the appropriate limitation on the amount a savings association could invest in the corporate debt securities of any one issuer.

FIRREA, however, requires the OTS to apply the section 84 lending limits to all loans, so the former "commercial" limit under § 563.93 is now the General Limitation. Since the lending limits set forth in section 84 already governed the extent to which a savings association could invest in the corporate debt securities of one issuer, today's rule does not impose a new limitation on investment in corporate debt of one issuer, but merely clarifies the regulatory references. Thus, today's rule incorporates a technical amendment to § 545.75 consistent with this analysis.

A savings association's total investment in commercial paper will be similarly treated. The OCC regulations governing loans to one borrower define the term "loans and extensions of credit" as any direct or indirect advance of funds, including obligations of makers and endorsers arising from the discounting of commercial paper, to a person. 12 CFR 32.2(a). Under today's rule, the commercial paper held by a savings association is included within the definition of "loans and extensions of credit" and continues to be subject to the loans to one borrower limitations. Thus, the aggregate amount of loans, corporate debt securities, and commercial paper of the same borrower or issuer held by a savings association is subject to the 15 percent of unimpaired capital and surplus limitation set forth at 12 U.S.C. 84.

B. Rated Obligations

Today's rule does not retain the substance of former § 563.93(b)(3), which permitted savings associations to invest greater amounts in certain rated obligations. Under this prior rule, in addition to the amounts permitted under the General Limitation, an association could invest up to one percent of assets or $1,000,000, whichever is more, in obligations of one issuer evidenced by commercial paper rated in the highest category or corporate debt securities rated in one of the two highest categories by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security. In addition, a savings association could invest up to one half of one percent of assets or $500,000, whichever is more, in obligations of one issuer evidenced by commercial paper rated in one of the two highest categories, or corporate debt securities rated in one of the three highest categories by a nationally recognized rating service.

The total investment of a savings association in the obligations of one issuer under this provision, however, could not exceed an amount equal to one percent of assets or one million dollars, whichever was greater. The Office is of the view that this additional investment authority in highly rated corporate debt and commercial paper of any one issuer could potentially lead to unsafe and unsound operation. However, the Office solicits specific comments addressing the advisability of continuing this additional authority and will consider all comments addressing this issue in formulating a final rule.

VIII. Transition Rules

Since the August 9, 1989 enactment of FIRREA, savings associations have sought guidance with respect to the effective date of FIRREA's "self-executing" imposition of more restrictive lending limitations. Associations have expressed particular concern with respect to the applicability of the new statutory limitations to loan commitments and loans made prior to FIRREA's enactment. The OTS has provided interim guidance through informal legal advice and Thrift Bulletins.

A. Loan Commitments

Two Thrift Bulletins, TB 32 and TB 32–1, provided specific guidance with respect to the treatment of loan commitments and outstanding loans made before the enactment of FIRREA. The Office reiterates the transition positions expressed in these documents. As stated in the rule, if a legally binding loan commitment was entered into—but not funded—prior to FIRREA's August 9, 1989 enactment, such a loan could be funded post-enactment (even in excess of the new limitation) and be subject to the preexisting loans to one borrower limitation under 12 CFR 563.93, not the more restrictive FIRREA limitation. This transition policy, however, contains several caveats.

First, this conclusion assumes that the loan commitment was legally binding prior to FIRREA's enactment. Under this transition policy it is incumbent upon the association to demonstrate that the commitment represents a legally binding commitment to fund. For example, the OCC's transition rules under 12 CFR 32.7 require either a written agreement or other file documentation evidencing the commitment. Where doubt exists as to the legally binding nature of the commitment, supervisory personnel may require a written legal opinion of the association's counsel.

In general, loan commitments for which the prospective borrower has paid no fee to the thrift should be reviewed closely to determine if a binding commitment exists. Such agreements typically contain broad provisions permitting the lenders to decline to fund on subjective grounds that effectively render the commitment unenforceable. In the absence of payment of such a fee, the association must overcome with convincing evidence the strong presumption that the commitment is not legally binding.

Finally, advances under renewals or extensions of such pre-enactment commitments must conform with the new lending limitations set forth under FIRREA if the renewal or extension of the commitment is made on or after FIRREA's date of enactment. This position is consistent with the OCC's transition rules governing loan commitments. *See* 12 CFR 32.7(d). An exception to this general rule for commitments partially funded prior to FIRREA's enactment is discussed below.

B. Outstanding Loans: Renewals

This previously announced transition provision also addresses loans

outstanding prior to enactment, and renewals and extensions of those loans post-enactment. It is the OTS's view that, for lending limit purposes, a renewal of a loan will generally not be regarded as the equivalent of a new loan at the time of renewal, *Provided:* (1) No new funds are advanced by the association to the borrower; and (2) a new borrower is not substituted for the original obligor. Provided these conditions are met, the renewal of such a loan will not result in a violation of the new statutory limitation; rather, the loan will be deemed "nonconforming." This position is consistent with the longstanding policy of the OCC as expressed in its written interpretations of applicable statutory and case law. *See also* 54 FR 43398, 43401 (Oct. 24, 1989).

Because the renewal of a nonconforming loan presents an opportunity to bring the loan into conformance, the association must, prior to such a renewal, make every effort to bring the loan into conformance with the new limitation. For example, the association should attempt to have the debtor partially repay the loan or obtain another institution's nonrecourse participation in the loan to bring it into lending limit compliance. It is incumbent upon the association to demonstrate with appropriate written evidence that such efforts have been made. The OTS will not consider the renewal made in accordance with these principles to be a violation of law. However, circumstances that indicate a deliberate purpose to evade the law and to extend unauthorized lines of credit will be deemed to violate the statutory limitations made applicable by FIRREA and expose the directorate to liability.

The OTS is also specifically adopting the OCC's policy regarding the restructuring of loans. The restructuring of a loan, to include extending repayment terms, altering interest rates, or obtaining additional security, will be treated as a renewal rather than a new loan and extension of credit, provided the original obligor is not released (and, as in the case with all loan renewals, no new funds are advanced). *Id.* ,at 43401. This policy reflects the OCC's historical treatment of such restructurings for lending limit purposes. Savings associations should be advised, however, that supervisory personnel will carefully review such renewals and that the Office reserves the right to impose more stringent restrictions if it is determined that such modifications are not consistent with safe and sound operation. The Office solicits specific comments addressing additional modifications that should similarly receive this announced renewal treatment and reasons therefore.

IX. Miscellaneous: Calculation of Limit and Maintenance of Records

Under today's rule, the amount of an association's "unimpaired capital and unimpaired surplus" must be calculated as of the association's most recent periodic report (monthly or quarterly) filed with the OTS prior to the date of granting or purchasing the loan or otherwise creating the obligation to repay funds, unless the association knows, or has reason to know, based on transactions or events actually completed, that its level of unimpaired capital and unimpaired surplus has changed by a material amount, upward or downward, subsequent to the filing of the report. As the Bank Board noted in 1985 in incorporating this provision, a "transaction or event" requiring a "negative" adjustment would include, for example, a supervisory directive to establish a specific loss allowance or notice of default on a loan. *See* 50 FR 45095 (Oct. 30, 1985).

Today's rule also retains provisions of former § 563.93(c) pertaining to an association's maintenance of records. The provision in today's rule, however, substitutes "the greater of $500,000 or 5 percent of unimpaired capital and unimpaired surplus of such association" for the "$250,000 or 2 percent of regulatory capital of such institution, whichever is greater" recordkeeping trigger of the former rule, and makes other technical changes. Today's Rule also deletes the provision of former § 563.93(c) that requires documentation in all cases where outstanding loans to one borrower exceed $1,000,000. Prudent loan underwriters may wish, however, to document compliance with the legal lending limits for all significant loans, even loans for amounts less than the aforementioned thresholds. Such documentation facilitates review by regulators seeking to determine a savings association's compliance with the legal lending limits during on-site examinations.

X. Authorization to Impose More Stringent Restrictions

Finally, today's rule also restates the statute's express authorization to the Director to impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the savings association.

XI. Interpretations

FIRREA and its legislative history expressly require that the section 84 lending limit provisions apply to savings associations in the same manner and to the same extent as they apply to national banks, to include the Comptroller's lending limit regulations and interpretations promulgated after notice-and-comment rulemaking procedures. The section 84 General Limitation incorporated by the statute, although continuing significant elements of the Bank Board's prior § 563.93 lending limit rule, presents many issues that require careful analysis as well as interpretation of provisions which the Office has never before been required to interpret.

The agency is mindful of its duty to protect the safety and soundness of the financial institutions within its charge, and will appropriately exercise its interpretive authority to ensure that safe and sound lending practices are established and followed. The OTS will interpret the Special Rules provisions, any more strict lending limit provisions set forth by the Office, questions regarding the interaction of these provisions with the General Limitation, and other broad lending limit issues. The Office anticipates that it may also address questions about the application of the national bank lending limits to savings associations that are not specifically resolved by the Comptroller's regulations and interpretations issued after a notice-and-comment rulemaking. The Office anticipates that, as a matter of policy, it will give substantial weight to the interpretive opinions of the OCC, including letter opinions, that have not been adopted through notice-and-comment rulemaking procedures and will regard them as strong evidence of safe and sound banking practices. These latter opinions, however, are not deemed to be legally binding on savings associations.

Until such time as the OTS promulgates its final rule, savings associations must adhere to the lending limitation provisions set forth in this Interim Final Rule, which both sets forth new provisions and references the relevant lending limitation provisions under 12 U.S.C. 84, 12 CFR parts 32, 7, and 3, and the codified interpretations thereunder. In the interim, questions regarding these lending limit policies should be directed to OTS legal and policy staff.

XII. Reasons for Adoption of an Interim Final Rule

FIRREA's statutory incorporation of the section 84 lending limitations, the statute's incorporation of new Special Rules provisions, and the uncertainty generated by the interaction of these new provisions with the existing § 563.93 regulations, have produced an acute need for guidance as to savings associations' loans to one borrower limitations. Although the Office has issued guidance in the form of Thrift Bulletins, the array of questions generated by the statute, coupled with the need for associations to have clear, binding guidance in order to conduct lending operations in an orderly manner, requires, in the Office's view, that an Interim Final Rule be issued. This need for immediate guidance cannot be overemphasized in light of the statutory incorporation of certain lending limitations over which this agency has not been provided broad rulemaking authority (*i.e.*, the section 84 limitations).

Therefore, pursuant to 5 U.S.C. 553(b)(3)(B), the Office has determined that it would be contrary to the public interest to issue this rule for notice and public procedure and, pursuant to 5 U.S.C. 553(d)(3), finds that good cause exists for an immediately effective rule.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

Executive Order 12291

The Director of the Office of Thrift Supervision has determined that this Interim Rule does not constitute a "major rule" within the meaning of Executive Order 12291. Consequently, a Regulatory Impact Analysis is not required.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfer, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Currency, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Director, Office of Thrift Supervision, hereby amends title 12, chapter V, parts 545 and 563 of the Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

2. Amend § 545.75 by revising paragraph (b)(3) to read as follows:

§ 545.75 Commercial paper and corporate debt securities.

* * * * *

(b) *Limitations.* * * *

(3) A Federal savings association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any one person or entity affiliated with such issuer, together with other loans shall not exceed the limitations contained in § 563.93(c) of this chapter.

* * * * *

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS.

PART 563—OPERATIONS

3. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

4. Part 563 is amended by revising § 563.93 to read as follows:

§ 563.93 Lending limitations.

(a) *Scope.* This section applies to all loans and extensions of credit made by savings associations and their subsidiaries. This section does not apply to loans made by a savings association to its affiliates or subsidiaries (as these terms are defined in paragraph (b) of this section).

(b) *Definitions.* In applying these lending limitations, savings associations shall apply the definitions and interpretations promulgated by the Office of the Comptroller of the Currency consistent with 12 U.S.C. 84. *See* 12 CFR part 32. In applying these definitions, pursuant to 12 U.S.C. 1464, savings associations shall use the terms "savings association," "savings associations," and "savings association's" in place of the terms "national bank" and "bank," "banks," and "bank's," respectively. For purposes of this section:

(1)(i) The term *affiliate* with respect to a savings association means:

(A) Any company that controls the savings association and any other company that is controlled by the company that controls the savings association;

(B) Any company controlled by the savings association except a company excluded from the definition of "affiliate" under paragraph (b)(1)(ii)(A) of this section;

(C) A bank subsidiary of the savings association;

(D) Any company:

(*1*) That is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by a trust or otherwise, the savings association or any company that controls the savings association, or

(*2*) In which a majority of its directors or trustees constitute a majority of the persons holding any such office with the savings association or any company that controls the savings association;

(E)(*1*) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the savings association or any subsidiary or affiliate of the savings association, or

(*2*) Any investment company with respect to which a savings association or any affiliate thereof is an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(20); and

(F) Any company that the Office or the Board of Governors of the Federal Reserve System determines by regulation or order to have a relationship with the savings association or any subsidiary or affiliate of the savings association such that covered transactions by the savings association or its subsidiary with that company may be affected by the relationship to the detriment of the savings association or its subsidiary.

(ii) The following shall not be considered to be an affiliate:

(A) Any company that is a subsidiary of a savings association, as described in paragraph (b)(13)(ii) of this section, except a company with respect to which a determination is made by the Board of Governors of the Federal Reserve System under section 23A(b)(1)(E) of the Federal Reserve Act, 12 U.S.C.

371c(b)(1)(E), not to exclude such subsidiary company from the definition of affiliate;

(B) Any company engaged solely in holding the premises of the savings association;

(C) Any company engaged solely in conducting a safe deposit business;

(D) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(E) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of such law or regulation, for a period of two years from the date of the exercise of such rights, subject, upon application, to authorization by the Office for good cause shown of extensions of time for not more than one year at a time, but such extensions in the aggregate shall not exceed three years.

(2) Except as provided elsewhere in this paragraph, the term *one borrower* has the same meaning as the term "person" set forth at 12 CFR part 32. It also includes, in addition to the definition cited therein, a "financial institution" as defined at 12 CFR 561.19. Notwithstanding 12 CFR part 32, the term "one borrower" shall also include the following who are subject to the lending limit restrictions set forth under this section:

(i) All partnerships of which such person is a limited partner owning an interest of ten percent or more (based on the value of his contribution); and

(ii) If such person is a partnership, a limited partner owning an interest of ten percent or more (based on the value of his contribution).

(3) The term *company* means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes a "savings association" and a "bank".

(4)(i) A company or shareholder shall be deemed to have *control* over another company if:

(A) The company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

(B) The company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or

(C) The company or shareholder would be deemed to control the company under § 574.4(a) of this subchapter, or presumed to control the company under § 574.4(b) of this subchapter, and in the latter case, such control has not been rebutted; and

(ii) Notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (b)(1)(i)(D) of this section.

(5) The term *covered transaction* means with respect to an affiliate of a savings association:

(i) A loan or extension of credit to the affiliate;

(ii) A purchase of or an investment in securities issued by the affiliate;

(iii) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Board of Governors of the Federal Reserve System by order or regulation;

(iv) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company;

(v) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate; or

(vi) The payment of money to an affiliate under contract, lease, or otherwise; *Provided,* That a covered transaction does not include a transaction with a mortgage banking affiliate as described in 12 CFR 250.250.

(6) *Contractual commitment to advance funds* has the meaning set forth in 12 CFR part 32;

(7) *Loans and extensions of credit* has the meaning set forth in 12 CFR part 32, and includes investments in commercial paper and corporate debt securities. The Office expressly reserves its authority to deem other arrangements which are, in substance, "loans and extensions of credit" to be encompassed by this term;

(8) The term *loans* as used in the phrase "Loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith" does not include an association's taking of a purchase money mortgage note from the purchaser *Provided That:*

(i) No new funds are advanced by the association to the borrower; and

(ii) The association is not placed in a more detrimental position as a result of the sale;

(9) *Readily marketable collateral* has the meaning set forth in 12 CFR part 32;

(10) *Residential housing units* has the same meaning as the term "residential real estate" set forth in 12 CFR 541.29. The term "to develop" includes the various phases necessary to produce housing units as an end product, to include: Acquisition, development and construction; development and construction; construction; rehabilitation; or conversion. The term "domestic" includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands;

(11) *Single family dwelling unit* has the meaning set forth in 12 CFR 541.20;

(12) A *standby letter of credit* has the meaning set forth in 12 CFR part 32;

(13) The term *subsidiary:*

(i) With respect to a specified company, other than a savings association, means a company that is controlled, directly or indirectly, by such specified company; and

(ii) With respect to a savings association, means a company:

(A) That is engaged solely in activities of the type and in the amount that a Federal savings association may directly conduct under section 5(c) of the Home Owners' Loan Act, 12 U.S.C. 1464(c);

(B) Which the savings association controls; and

(C) The voting stock of which is eligible to be held only by savings associations.

(14) *Unimpaired capital and unimpaired surplus* means "capital and surplus" as that term is defined in 12 CFR 3.100. The term "fully phased-in capital standards" means the capital standards that will be in effect as of January 1, 1995 at the expiration of all statutory and regulatory phase-in requirements set forth in 12 U.S.C. 1464(t) and 12 CFR 567.2, 567.5, and 567.9.

(c) *General limitation.* Section 5200 of the Revised Statutes (12 U.S.C. 84) shall apply to savings associations in the same manner and to the same extent as it applies to national banks. This statutory provision and lending limit regulations and interpretations promulgated by the Office of the Comptroller of the Currency pursuant to a rulemaking conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* (including the regulations appearing at 12 CFR part 32, but not including 12 CFR 32.7) in the same manner and to the same extent as these provisions apply to national banks:

(1) The total loans and extensions of credit by a savings association to one borrower outstanding at one time and not fully secured, as determined in the

same manner as determined under 12 U.S.C. 84(a)(2), by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 percent of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a savings association to one borrower outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (c)(1) of this section.

(d) *Exceptions to the general limitation*—(1) *$500,000 exception.* If a savings association's lending limitation calculated under paragraph (c)(1) of this section is less than $500,000, notwithstanding this limitation in paragraph (c)(1) of this section, such savings association may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed $500,000.

(2) *Statutory exceptions.* The exceptions to the lending limits set forth in 12 U.S.C. 84 and 12 CFR part 32 are applicable to savings associations in the same manner and to the same extent as they apply to national banks.

(3) *Loans to develop domestic residential housing units.* A savings association may make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, including all amounts loaned under the authority of the General Limitation set forth under paragraphs (c)(1) and (c)(2) of this section, *Provided That:*

(i) The final purchase price of each single family dwelling unit the development of which is financed under paragraph (d)(3) of this section does not exceed $500,000;

(ii) The savings association is, and continues to be, in compliance with its fully phased-in capital standards, as defined in paragraph (b)(14) of this section;

(iii) The Director, by order, and subject to any conditions which he may impose in such order, permits the savings association to avail itself of the higher limit set forth under paragraph (d)(3) of this section;

(iv) Loans made under paragraph (d)(3) of this section to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(v) Such loans comply with the applicable loan-to-value requirements that apply to Federal savings associations.

The authority of a savings association to make a loan or extension of credit under this exception ceases immediately upon the association's failure to comply with any one of the requirements set forth in this paragraph or any condition(s) set forth in a Director's order under paragraph (d)(3)(iii) of this section.

(e) *Loans to finance the sale of REO.* A savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith shall not, when aggregated with all other loans to such borrower, exceed the General Limitation in paragraph (c)(1) of this section.

(f) *Calculating compliance and recordkeeping.* (1) The amount of an association's unimpaired capital and unimpaired surplus pursuant to paragraph (b)(8) of this section shall be calculated as of the association's most recent periodic report (monthly or quarterly) required to be filed with the OTS prior to the date of granting or purchasing the loan or otherwise creating the obligation to repay funds, unless the association knows, or has reason to know, based on transactions or events actually completed, that such level has changed significantly, upward or downward, subsequent to filing of such report.

(2) If a savings association or subsidiary thereof makes a loan or extension of credit to any one borrower, as defined in paragraph (b)(2) of this section, in an amount which, when added to the total balances of all outstanding loans owed to such association and its subsidiary by such borrower, exceeds the greater of $500,000 or 5 percent of unimpaired capital and unimpaired surplus, the records of such association or its subsidiary with respect to such loan shall include documentation showing that such loan was made within the limitations of paragraphs (c) and (d) of this section; for the purpose of such documentation such association or subsidiary may require, and may accept in good faith, a certification by the borrower identifying the persons, entities, and interests described in the definition of one borrower in paragraph (b)(2) of this section.

(g) *More stringent restrictions.* The Director may impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the savings association.

Appendix to § 563.93—Interpretations

Section 563.93–100 Interrelation of General Limitation With Exception for Loans to Develop Domestic Residential Housing Units.

The § 563.93(d)(3) exception for loans to one person to develop domestic residential housing units is characterized in the regulation as an "alternative" limit. This exceptional $30,000,000 or 30 percent limitation does not operate in addition to the 15 percent General Limitation or the 10 percent additional amount an association may loan to one borrower secured by readily marketable collateral, but serves as the uppermost limitation on a savings association's lending to any one person once an association employs this exception. An example will illustrate the Office's interpretation of the application of this rule:

Example: Savings Association X's lending limitation as calculated under the 15 percent General Limitation is $800,000. If Association X loans to Y $800,000 for commercial purposes, Association X cannot lend Y an additional $1,600,000, or 30 percent of capital and surplus, to develop residential housing units under the paragraph (d)(3) exception. The (d)(3) exception operates as an uppermost limitation on all lending to one borrower (for associations that employ this exception) and includes any amounts loaned to the same borrower under the General Limitation. Association X, therefore, may lend only an additional $800,000 to Y, provided the paragraph (d)(3) prerequisites have been met. The amount loaned under the authority of the General Limitation ($800,000), when added to the amount loaned under the exception ($800,000), yields a sum that does not exceed the 30 percent uppermost limitation ($1,600,000).

This result does not change even if the facts are altered to assume that some or all of the $800,000 amount of lending permissible under the General Limitation's 15 percent basket is not used, or is devoted to the development of domestic residential housing units. In other words, using the above example, if Association A loans $400,000 to Y for commercial purposes and $300,000 to Y for residential purposes—both of which would be permitted under the Association's $800,000 General Limitation—the Association's remaining permissible lending to Y would be: $100,000 under the General Limitation, plus another $800,000 to develop domestic residential housing units if the Association meets the paragraph (d)(3) prerequisites. (The latter is $800,000 because in no event may the total lending to Y exceed 30 percent of unimpaired capital and unimpaired surplus). If the Association did not loan to Y the remaining $100,000 permissible under the General Limitation, its permissible loans to develop domestic residential housing units under paragraph (d)(3) would be $900,000 instead of $800,000 (the total loans to Y would still equal $1,600,000).

In short, under the paragraph (d)(3) exception, the 30 percent or $30,000,000 limit will always operate as the uppermost limitation, unless of course the association does not avail itself of the exception and merely relies upon its General Limitation.

Section 563.93–101 Interrelationship Between the General Limitation and the 150 Percent Aggregate Limit on Loans to All Borrowers to Develop Domestic Residential Housing Units

The Office has already received numerous questions regarding the allocation of loans between the different lending limit "baskets," *i.e.*, the 15 percent General Limitation basket and the 30 percent Residential Development basket. In general, the inquiries concern the manner in which an association may "move" a loan from the General Limitation basket to the Residential Development basket. The following example is intended to provide some guidance:

Example: Association A's General Limitation under section 5(u)(1) is $15 million. In January, Association A makes a $10 million loan to Borrower to develop domestic residential housing units. At the time the loan was made, Association A had neither sought nor received Director approval to avail itself of the residential development exception to lending limits. Therefore, the $10 million loan is made under Association A's General Limitation.

In June, Association A applies for and receives authorization to lend under the Residential Development exception. In July, Association A lends $3 million to Borrower to develop domestic residential housing units. In August, Borrower seeks an additional $12 million commercial loan from Association A. Association A cannot make the loan to Borrower, however, because it already has an outstanding $10 million loan to Borrower that counts against Association A's General Limitation of $15 million. Thus, Association A may lend only up to an additional $5 million to Borrower under the General Limitation.

However, Association A may be able to reallocate the $10 million loan it made to Borrower in January to its Residential Development basket provided that: (1) Association A has obtained a Director's order to avail itself of the additional lending authority for residential development and maintains compliance with all prerequisites to such lending authority; (2) the original $10 million loan made in January constitutes a loan to develop domestic residential housing units as defined; and (3) the housing unit(s) constructed with the funds from the January loan remain in a stage of "development" at the time Association A reallocates the loan to the domestic residential housing basket. The project must be in a stage of acquisition, development, construction, rehabilitation, or conversion in order for the loan to be reallocated.

If Association A is able to reallocate the $10 million loan made to Borrower in January to its Residential Development basket, it may make the $12 million commercial loan requested by Borrower in August. Once the January loan is reallocated to the Residential Development basket, however, the $10 million loan counts towards Association's 150 percent aggregate limitation on loans to all borrowers under the Residential Development basket (section 5(u)(2)(A)(*ii*)(*IV*)).

If Association A reallocates the January loan to its domestic residential housing basket and makes an additional $12 million commercial loan to Borrower, Association A's totals under the respective limitations would be: $12 million under the General Limitation; and $13 million under the Residential Development limitation. The full $13 million residential development loan counts toward Association A's aggregate 150 percent limitation.

Dated: March 13, 1990.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Senior Deputy Director, Supervision/Policy.

Salvatore R. Martoche,

Acting Director.

[FR Doc. 90–6556 Filed 3–26–90; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 90-543]

RIN 1550-AA26

Transactions With Affiliates and Subsidiaries

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (the "Office"), pursuant to and in accordance with sections 10(d) and 11 of the Home Owners' Loan Act ("HOLA"), as added by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, is proposing to amend its regulations pertaining to transactions between savings associations and/or their subsidiaries and their affiliates. The proposed amendments (i) define and clarify the applicability to thrifts of the limitations and prohibitions specified in sections 23A and 23B of the Federal Reserve Act ("FRA"), 12 U.S.C. 371c and 372c-l, (ii) clarify the additional limitations imposed on savings association transactions with affiliates pursuant to section 11 of the HOLA, and (iii) pursuant to section 11(a)(4) of the HOLA, impose certain additional regulatory restrictions and safeguards in connection with the application of sections 23A and 23B to transactions between savings associations and/or their subsidiaries and their affiliates. The proposal is structured as a comprehensive set of restrictions and prohibitions, rather than as piecemeal supplements to sections 23A and 23B, because of the pervasive and often complex nature of the differences between the application of those sections, on the one hand, and the more stringent treatment provided for savings associations under section 11 of the HOLA and certain provisions of this proposal, on the other hand. The Office requests comments on all aspects of this proposal, and particularly solicits comments regarding the treatment of thrift subsidiaries under the proposal.

DATES: Comments must be received on or before May 29, 1990.

ADDRESSES: Send comments to: Director, Information Services Section, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 801 Seventeenth Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kevin L. Petrasic, Assistant Chief Counsel for Corporate Transactions (202) 906-6452; Richard L. Little, Senior Counsel for Corporate Structure (202) 906-6447; V. Gerard Comizio, Senior Associate Chief Counsel/Director, Corporate and Securities Division (202) 906-6411; Julie L. Williams, Deputy Chief Counsel for Securities and Corporate Structure (202) 906-6459; C. Dawn Causey, Attorney, Enforcement; or Michael P. Scott, Policy Analyst, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On August 9, 1989, President Bush signed into law the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (the "FIRREA"). The FIRREA overhauls the regulatory structure for savings associations by, among other things, transferring regulatory oversight of thrifts from the Federal Home Loan Bank Board (the "FHLBB") to the Office of Thrift Supervision (the "Office"), abolishing the FHLBB, separating the functions of regulatory oversight and insurance of thrifts by transferring the insurance function from the Federal Savings and Loan Insurance Corporation to the Savings Association Insurance Fund, imposing more stringent capital requirements on savings associations, repealing major portions of the National Housing Act (the "NHA") and transferring relevant portions thereof, including oversight of savings and loan holding companies, to the Home Owners' Loan Act (the "HOLA") and certain other provisions to the Federal Deposit Insurance Act (the "FDIA"), and providing additional enforcement powers to the Office. Among the provisions contained in the FIRREA is section 301, which, *inter ali*, adds new section 11 to the HOLA, 12 U.S.C. 1468.

A. Section 11 of the HOLA

New section 11 of the HOLA begins with a general provision that "[s]ections 23A and 23B of the FRA shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank [as defined in such Act] * * *[1] However, this initial general parity with banks is then interrupted by several important differences.

First, a savings association may not make any loan or extension of credit to any affiliate unless that affiliate is engaged only in activities described in section 10(c)(2)(F)(i) of the HOLA, *ie.*, permissible bank holding company activities.[2] Next, a savings association also is barred from entering into any transaction of the type described in section 23A(b)(7)(B) of the FRA, *i.e.*, investing in the securities of an affiliate, other than with respect to shares of a subsidiary of the association.[3] Finally, the so-called "sister bank" exemption from the quantitative limitations of section 23A, which is available to 80 percent commonly-controlled banks pursuant to section 23A(d)(1), generally is not available to "sister thrifts" until January 1, 1995,[4] but, is available for transactions between banks and thrifts that are "sisters" in the same bank/thrift holding company where the thrift is at least 80 percent owned by the same company that also controls a bank, provided every savings association and every bank owned by such company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill.[5]

In addition to the above-referenced limitations and those imposed under sections 23A and 23B, section 11 provides that the Office may impose such additional restrictions on any transaction between any savings association and any affiliate as it determines to be necessary to protect the safety and soundness of the association.[6]

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[1] 12 U.S.C. 1468(a)(1).

[2] 12 U.S.C. 1468(a)(1)(A). As already defined in 12 CFR 584.2-2, these include activities approved for bank holding companies by regulation, 12 CFR 225.25, or by case-by-case order of the Federal Reserve Board, 12 CFR 225.23. An exception to this prohibition is provided by section 28(e) of the FDIA, which allows an association to accept a "qualified note" from its holding company, or a holding company affiliate, in connection with the transfer by a savings association of its "junk bond" holdings to the holding company or the affiliate, provided a number of other conditions are satisfied.

[3] 12 U.S.C. 1468(a)(1)(B).

[4] 12 U.S.C. 1468(a)(2)(B).

[5] 12 U.S.C. 1468(a)(2)(A). The language of this sister bank/thrift exemption also would include transactions between two thrift subsidiaries within the same holding company structure, provided the other conditions of the exemption are met.

[6] 12 U.S.C. 1468(a)(4). In this regard, it should be emphasized that the Conflicts Rules, currently at 12 CFR 563.41 and 563.43 and which would be consolidated at 12 CFR 563.43 under the current proposal, will continue to apply to transactions between savings association not in a holding company structure and "affiliated persons," and to transactions between associations in a holding company structure and natural persons who meet the "affiliated person" definition. The new section 11 transactions with affiliates provisions are in addition to, and do not supercede these regulations.

For purposes of applying the provisions of sections 23A and 23B of the FRA to savings associations, section 11 of the HOLA provides that an "affiliate" of a savings association includes any company that would be an "affiliate," as defined in section 23A, of such savings association if such association were a "member bank." [7]

New section 11 of the HOLA also provides that section 22(h) of the FRA, covering extensions of credit to executive officers, directors, and principal shareholders of a bank, is applicable to savings associations in the same manner and to the same extent as if the savings association were a "member bank." [8] As in the section 23A and 23B context, the Office is given the authority to impose additional restrictions on loans or extensions of credit to any director or executive officer of a thrift, or any person that directly or indirectly owns, controls, or holds with powers to vote 10 percent or more of any class of voting securities of a thrift, where the Office determines that such restrictions are necessary to protect the safety and soundness of the savings association.[9]

Finally, section 11 also provides that the Office has authority to enforce sections 23A and 23B (and 22(h)) of the FRA as they apply to thrifts.[10] Violations of such sections are subject to penalties which range from $5,000 per day for "first tier" offenses, up to the lesser of $1 million or 1 percent of the association's assets, for "third tier" violations.[11] In this hierarchy, a "first tier" violation is one without certain exacerbating factors; a "second tier" offense involves reckless conduct that is unsafe or unsound, or a breach of fiduciary duty, and which is part of a pattern of misconduct that causes more than minimal loss or that results in or is likely to result in pecuniary gain to the alleged violator; and a "third tier" violation involves a knowing violation, unsafe or unsound conduct, or a breach of fiduciary duty, and knowingly or recklessly causing substantial loss to the thrift or resulting in a substantial pecuniary gain or other benefit to the alleged violator.

In order to provide a context for the Office's proposal to implement section 11 of the HOLA, and in particular, to apply provisions that are more stringent than the result that would follow if sections 23A and 23B were simply applied to thrifts without any adjustment, the following discussion describes how sections 23A and 23B now apply to savings associations pursuant to section 11 of the HOLA, in the absence of further regulation by the Office.

1. Section 23A of the FRA

Section 23A employs three complementary approaches to transactions, with affiliates controls in order to prevent banks (and now thrifts) from misusing their financial resources for the benefit of their affiliates.[12] First, the section imposes individual and aggregate percentage of capital limits on the dollar amount of a wide variety of affiliate dealings coming within the definition of a "covered transaction." Second, the provision establishes rules for ensuring arms' length dealings between an association and its affiliates. Finally, the section precludes the acquisition of "low quality" assets by an association from its affiliates, and imposes detailed collateralization requirements for affiliate credit transactions.

For purposes of analysis, it is helpful to divide section 23A into four parts: (1) The types of companies that are affiliates and thereby subject to restrictions; (2) the types of transactions that are covered by the statute; (3) quantitative limitations applicable to covered transactions with an affiliate; and (4) collateral requirements and other qualitative safeguards applicable to transactions with affiliates.[13]

a. Definition of the Term "Affiliate"

With certain exceptions, an "affiliate" of a savings association for purposes of the application of section 23A includes:[14]

(A) Any company that controls the savings association and any other company that is controlled by the company that controls the association;

(B) A *bank* subsidiary of the savings association;

(C) Any company: (1) That is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the savings association or any company that controls the association; or (2) in which a majority of the directors or trustees constitute a majority of the persons holding any such office with the savings association or any company that controls the association;

(D) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by a savings association or any subsidiary or affiliate of the association or any investment company with respect to which a savings association or any affiliate thereof is an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940; and

(E) Any company that the FRB determines by regulation or order to have a relationship with the savings association or any subsidiary or affiliate of the association such that covered transactions by the savings association or its subsidiary with that company may be affected by the relationship to the detriment of the association or its subsidiary.[15]

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[7] 12 U.S.C. 1468(a)(3).

[8] 12 U.S.C. 1468(b)(1).

[9] 12 U.S.C. 1468(b)(2). The Office expects to soon propose regulations to implement this aspect of section 11 of the HOLA and in so doing integrate and revise the existing Conflicts Rules with such new rules.

[10] 12 U.S.C. 1468(c). However, Congress indicated that only the FRB should have the authority to issue formal exemptive orders under section 23A of the FRA. *See* H.R. Rep. No. 101-222, 101st Cong., 1st Sess. 408 (1989) (FIRREA Conference Report); H.R. Rep. No. 101-54, Part I, 101st Cong., 1st Sess. 438 (1989); *see also* 135 Cong. Rec. H4969 (daily ed., August 3, 1989) (statement of Rep. Hubbard); 135 Cong. Rec. S10200 (daily ed., August 4, 1989) (statements of Sens. Sanford, Riegle and Cranston).

[11] 12 U.S.C. 1828(j)(4) and (5).

[12] Section 23A of the FRA was originally enacted as a part of the Banking Act of 1933, a statute primarily aimed at correcting abuses that had led to the bank failures of the Depression era. That Act, portions of which are commonly referred to as the Glass-Steagall Act, was a response to a banking system collapse, including the stock market crash and resulting financial crisis of the 1930's. The articulated purpose of the Act was to ensure a "safer use of the assets of the banks, to regulate interbank control [and] to prevent the undue diversion of funds into speculative operations." H.R. Rep. No. 150, 73rd Cong., 1st Sess. 1 (1933). According to a contemporary commentator, a fundamental objective of the original section 23A legislation was to "prevent the misuse of bank resources in virtually all possible financial transactions that might occur between a bank and its affiliate, through the imposition of both quantitative and qualitative limitations on such transactions." Miles, *Banking Affiliate Regulation Under Section 23A of the Federal Reserve Act*, 105 Banking L. J., 476, 481 (1988) (hereinafter, referred to as "Miles").

[13] *See* Rose and Talley, *The Banking Affiliates Act of 1982: Amendments to Section 23A*, 68 Fed. Res. Bull. 693, 694 (1982).

[14] Significantly, in the description of what constitutes an "affiliate," a natural person is not included. Coverage of natural persons that are controlling shareholders is provided, however, under section 22(h) of the FRA.

[15] 12 U.S.C. 371c(b)(1). With respect to this final provision, the explanation of the guiding principles followed by the FRB in formulating its proposed amendments to section 23A in 1982, is instructive:

For the purposes of section 23A, the Board believes that the term "affiliate" should apply to organizational relationships involving a bank (1) where the relationship is not one of "arm's-length" and (2) where, because of this relationship, the bank may engage in transactions that may adversely affect its condition. Such transactions may be designed either to rescue a financially troubled affiliate or to "drain" a bank for the benefit of an affiliate. It should be noted that the emphasis of section 23A is on organizational relations and the

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Notably, under section 23A, the definition of an affiliate excludes, among others, any company, other than a bank, that is a subsidiary of a savings association unless a determination is made not to exclude such a subsidiary company from the "affiliate" definition.[16] Subsidiaries instead are treated as equivalent to the association itself for purposes of the section 23A rules.[17] Thus, a transaction between a non-affiliate subsidiary of a savings association and a savings and loan holding company affiliate is subject to section 23A.[18]

b. "Covered Transactions"

The term "covered transaction" includes:

(A) a loan or extension of credit to an affiliate; [19]

(B) A purchase of, or an investment in, securities issued by an affiliate; [20]

(C) A purchase of assets, including assets subject to an agreement to repurchase, from an affiliate, except purchases of real and personal property that are specifically exempted by the FRB; [21]

(D) The acceptance of securities issued by an affiliate as collateral security for a loan or extension of credit to any person or company; or

(E) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate.[22]

Certain types of otherwise covered transactions are exempted from the quantitative limitations of section 23A, and thus, for practical purposes, may be regarded as exempted from treatment as a covered transaction. Under section 23A(d)(1), transactions between certain types of commonly controlled "banks" are exempt from the quantitative limitations that would otherwise apply. Such exemption applies to transactions between a "member bank" (and its subsidiaries) and another "bank:"

(A) Which controls 80 percent or more of the voting shares of the member bank;

(B) In which the member bank controls 80 percent or more of the voting shares; or

(C) In which 80 percent or more of the voting shares are controlled by the company that controls 80 percent or more of the voting shares of the member bank.[23]

Under section 11 of the HOLA, however, the special "sister bank" treatment of section 23A(d)(1) generally is not available to savings associations held in the same structures as described above. But, as noted previously, a more modest parent/subsidiary thrift exemption has been created.[24]

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transactions arising out of such relationships, in contrast to strictly "insider" dealings involving bank officers, directors or shareholders.

A Discussion of Amendments to Section 23A of the Federal Reserve Act Proposed by the Board of Governors of the Federal Reserve System, attachment to letter from Paul A. Volcker to the Honorable Jake Garn, October 2, 1981.

[16] 12 U.S.C. 371c(b)(2)(A). In a regulation proposed by the FHLBB in June 1988, which was intended to implement section 23A as applied by the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552 ("CEBA"), in the savings and loan holding company context, included as "affiliates" for purposes of the application of section 23A were subsidiaries of a subsidiary savings association that were engaged in activities that the savings association would not be authorized to engage in directly. *See* 53 FR 21838 (June 10, 1988). As discussed in section B.2.a., *see infra*, "Additional Restrictions and Safeguards—Treatment of Subsidiaries," the present proposal similarly treats certain types of subsidiaries as "affiliates," for purposes of transactions with affiliates regulation.

[17] The terminology used in section 11 of the HOLA to apply sections 23A and 23B of the FRA to savings associations produces an interesting result in this context. Because section 11 provides that a savings association is to be treated as if it were a "member bank," (not a "bank"), a savings association that is controlled by another savings association is a "subsidiary" of that institution and, thus, from the perspective of the parent thrift would be excluded from the definition of an "affiliate." Accordingly, although one reading of section 11(a)(2)(A) of the HOLA may limit the availability of the "sister bank" exemption of section 23A(d)(1) in the savings association context, ironically, the same result is partially achieved as a result of the definitional exclusion of subsidiaries from the term "affiliate." Such an exemption would apply to transactions analyzed from the perspective of the parent thrift, but not from the vantage point of the subsidiary thrift.

[18] Other companies excluded from the definition of an "affiliate" are: (1) Any company engaged solely in holding the premises of the association; (2) any company engaged solely in conducting a safe deposit business; (3) any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and (4) any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or Federal Law or regulation, for a period of two years from the date of the exercise of such rights, subject, upon application, to authorization for good cause shown of extensions of time for not more than one year at a time, subject to an aggregate limit of three years. 12 U.S.C. 371c(b)(2)(B)-(E).

[19] As already noted, however, new section 11 of the HOLA bars a savings association from making any loan or extension of credit to an affiliate if the affiliate is not engaged exclusively in activities permissible for bank holding companies. 12 U.S.C. 1468(a)(1)(A).

Significantly, the FRB has held that a member bank's purchase of, or participation in, a loan originated by a mortgage banking affiliate would not be regarded as an extension of credit to that affiliate if "the member bank's commitment to purchase the loan, or a participation therein, is obtained by the affiliate within the context of a proposed transaction or series of proposed transactions, in anticipation of the affiliate's commitment to make such loans, and is based upon the [member] bank's independent evaluation of the credit worthiness of the mortgagors. In these * * * circumstances, the member bank would be taking advantage of an investment opportunity rather than being impelled by any improper incentive to alleviate working capital needs of the affiliate that are directly attributable to excessive outstanding commitments." 12 CFR 250.250. The FRB applies this provision very narrowly, however, by taking the position that an independent credit evaluation must be done for each loan to be purchased, prior to the time the affiliate commits to make the loan—the member bank's reliance on having the same or similar underwriting standards as its affiliate is not sufficient. In addition, the staff of the FRB has advised that any affiliate engaging in loan transactions pursuant to this provision must have adequate and independent working capital to do such transactions, *i.e.*, the affiliate's working capital cannot consist of loans from the member bank.

The net result is that a transaction that meets the foregoing standards is treated by the FRB as if it were a transaction directly by the bank—looking through the involvement of the affiliate—and therefore as exempt from the limitations of section 23A. However, participation in a loan made by a third party lender to an affiliate would be counted as an extension of credit to the affiliate to the extent of the participation. Treatment of a purchase of a loan already made by a third party to an affiliate could also be viewed as an extension of credit, but an argument might also be made that the transaction is not an extension of credit, but rather an asset purchase from the unrelated third party—the staff of the FRB has advised, however, that they would view this as an extension of credit to the affiliate.

[20] Pursuant to section 11(a)(1)(B) of the HOLA, however, savings associations are barred from making any purchase of or investment in securities issued by an affiliate, other than with respect to shares of a subsidiary of the institution. 12 U.S.C. 1468(a)(1)(B).

[21] Exempted from the quantitative limitations of section 23A, however, are purchases of assets having a readily identifiable and publicly available market quotation which are purchased at that market quotation, and purchases of loans on a non-recourse basis from affiliated "banks." 12 U.S.C. 371c(d)(8). The former exemption is not applicable, however, to the purchase of marketable securities issued by an affiliate itself. Letter from J. Virgil Mattingly, Jr., to William P. Meyer, Esq., (May 6, 1986). Moreover, the latter exemption may not be available to affiliated thrifts at all, because, as already noted, savings associations are "member banks," not "banks," for purposes of the application of sections 23A and 23B.

[22] 12 U.S.C. 371c(b)(7). It would appear that the issuance of these financial instruments on behalf of an affiliate is not subject to the limitation imposed by section 11 of the HOLA, that bars a savings association from making loans or extensions of credit to affiliates that are not engaged exclusively in activities permissible for bank holding companies. Since the two types of transactions are listed separately as "covered transactions," seemingly, both would have been referenced in the limitation imposed by section 11 of the HOLA, rather than just the one, if the intention was to cover both.

[23] 12 U.S.C. 371c(d). This "sister bank" exemption does not apply, however, where one of the banks involved is a foreign bank.

[24] As previously noted, where one savings association is a subsidiary of another savings association, the subsidiary institution does not come within the definition of an "affiliate," and thus from the perspective of the parent institution, transactions with its subsidiary institution are not subject to the limits of section 23A.

Comparable "sister thrift" treatment was not made available as a general matter until January 1, 1995.[25]

Notwithstanding the current unavailability of a "sister thrift" exemption, there does exist a "sister bank/thrift" exemption. That is, special treatment is made available for banks and thrifts in the same bank/thrift holding company where the thrift is at least 80 percent owned by the same company that also controls a bank, provided all savings association(s) and bank(s) owned by such company comply with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill.[26]

A series of other transactions, of more limited scope, also are effectively exempted from treatment as a "covered transaction." With respect to the following types of transactions, savings associations, to the extent that they engage in such transactions, are accorded what in practice is a more limited type of transactional exemption from the scope of section 23A than that which is available to banks:[27]

(A) Making deposits in an affiliated bank or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the FRB may prescribe by regulation or order; [28]

(B) Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business; [29]

(C) Making a loan or extension of credit to, or issuing a guarantee, acceptance, or letter of credit on behalf of, an affiliate that is fully secured by obligations of the United States or its agencies, obligations fully guaranteed by the United States or its agencies as to principal and interest, or a segregated, earmarked deposit account with the savings association; [30] *provided*, That, in the case of any loan or extension of credit, the affiliate is engaged only in activities permissible for bank holding companies; [31]

(D) Purchasing securities issued by any company described in section 4(c)(1) of the Bank Holding Company Act ("BHCA"); [32]

(E) Purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition on acquiring "low quality assets" from an affiliate, purchasing loans on a nonrecourse basis from affiliated banks; [33] and

(F) Purchasing from an affiliate a loan or extension of credit that was originated by the savings association and sold to the affiliate subject to a repurchase agreement or with recourse.[34]

c. Quantitative Ceilings on Covered Transactions

The aggregate amount of "covered transactions" between a savings association, and its subsidiaries, and any single affiliate is limited to no more than 10 percent of the association's "capital stock and surplus;" and the aggregate amount of "covered transactions" between an association, and its subsidiaries, and all the association's affiliates is limited to no more than 20 percent of the association's "capital stock and surplus." [35]

The term "aggregate amount of covered transactions" means the amount of the covered transactions in which the association and/or its subsidiary is about to engage added to the current amount of all of an association's outstanding covered transactions.[36] For this purpose, "hard" assets, *e.g.*, buildings and office equipment, are generally counted at their cost, minus depreciation,[37] while amortizing assets, such as loans, are counted in decreasing amounts as they amortize. Where assets purchased are subsequently sold, they are subtracted from the amount of the balance of an association's transactions with the affiliate from which the asset was purchased, and from the association's overall total of transactions with affiliates.

A critical consideration to bear in mind in the application of the quantitative limits to savings associations is that, as applied by the FRB and other Federal banking agencies, the term "capital stock and surplus" refers in large measure to "tangible" capital.[38]

d. Collateral Requirements and Other Qualitative Safeguards

Although the best known safeguards of section 23A are probably the section's quantitative percentage limitations on transactions with affiliates, the section

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[25] 12 U.S.C. 1468(a)(2)(B). In this regard, however, the legislative history of the FIRREA contains many clarifications to the effect that the FRB could—and was encouraged to—use its exemptive authority under section 23A(e)(2) of the FRA to accord "sister thrifts" comparable treatment to "sister banks" under section 23A(d)(1). *See*, e.g., 135 Cong. Rec. H 4997 (daily ed., August 3, 1989) (statements of Reps. Gonzalez and Carper); 135 Cong. Rec. S 10200 (daily ed., August 4, 1989) (statements of Sens. Garn, Riegle and Sanford).

[26] 12 U.S.C. 1468(a)(2)(A). As already noted, this sister bank/thrift exemption also appears to be available for transactions between two thrifts that are owned by a bank holding company.

[27] The scope of these exemptions is more limited for two reasons. First, savings associations are subject to a prohibition on making loans or extensions of credit to any affiliate not engaged solely in the types of activities permissible for bank holding companies. Thus, exemptions pertaining to extensions of credit are basically meaningless to savings associations with respect to loans and other extensions of credit to such affiliates. Second, because of the terminology used in section 11 of the HOLA, savings associations are generally to be treated in the same manner as a "member bank." Thus, where section 23A uses the term "member bank," it is appropriate to read "savings association" in determining the application of the section to thrifts. However, section 11 of the HOLA does not, (except in one narrow situation) provide that savings associations also are to be treated as "banks" under the section. Accordingly, where a provision exempts a transaction between a "member bank" and a "bank," the translation in the savings association context is an exempt transaction would appear to be one between a savings association and a "bank."

[28] 12 U.S.C. 371c(d)(2).

[29] 12 U.S.C. 371c(d)(3).

[30] 12 U.S.C. 371c(d)(4).

[31] 12 U.S.C. 1468(a)(1)(A). As already noted, section 11 of the HOLA prohibits a savings association from making any loan or extension of credit to any affiliate unless the affiliate is engaged only in activities described in section 10(c)(2)(F)(i) of the HOLA.

[32] 12 U.S.C. 371c(d)(5). Generally, this refers to a company engaged in (1) holding or operating properties used wholly or substantially by any banking subsidiary of a bank [savings and loan] holding company in the operations of that subsidiary; (2) conducting a safe deposit business; (3) furnishing services to the holding company or its subsidiaries; or (4) liquidating certain assets. 12 U.S.C. 1843(c)(1).

[33] 12 U.S.C. 371c(d)(6).

[34] 12 U.S.C. 371c(d)(7).

[35] 12 U.S.C. 371c(a)(1). In applying the 10 percent individual affiliate limit, an affiliate and its subsidiaries, if any, are treated as separate affiliates.

[36] 12 U.S.C. 371c(b)(8).

[37] With regard to depreciable assets, the amount of reduction would be equal to the actual amount of depreciation taken by the association for Federal income tax purposes.

[38] *See, e.g.*, 12 CFR 250.161 (interpretation of the FRB regarding treatment of capital notes and debentures as "capital," "capital stock," or "surplus," and denying such treatment); 12 CFR 250.162 (interpretation of the FRB treating undivided profits as "capital stock and surplus"); 2 CFR 3.100 (interpretation of the OCC providing an extensive definition of capital stock and surplus).

In a 1988 opinion, the FRB staff specifically identified "capital stock and surplus" for purposes of section 23A by referring to categories on the "Consolidated Report of Condition" for commercial banks. These included total equity capital (which was the sum of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves, and cumulative foreign currency transaction adjustments), plus allowances for loan and lease losses and bad debts, as well as for securities and other contingencies. Excluded were unearned income and deferred taxes which would become payable with respect to the tax-free portion of reserves if such portion were transferred from the reserves. Also excluded were reserves for dividends declared and reserves for taxes, interest and expenses. Letter from Roger T. Cole to Sara A. Kelsey, February 25, 1988.

contains several important qualitative safeguards as well. One key safeguard is the requirement that each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a savings association, or its subsidiary, must be secured at the time of the transaction by collateral having a market value equal to at least 100 percent of the amount of the loan or extension of credit, guarantee, acceptance, or letter of credit.[39] The collateral requirements do not apply, however, to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.[40]

In the savings association context, however, it is also important to note that section 11(a)(1)(A) of the HOLA flatly prohibits a savings association from making any loan or extension of credit to an affiliate unless that affiliate is engaged only in permissible bank holding company activities.[41]

Another qualitative safeguard set forth under section 23A is that all covered as well as exempted transactions between a savings association (and its subsidiaries) and an affiliate must be on terms and conditions consistent with safe and sound banking practices.[42] Also, to the extent that the proceeds of any transaction with the association are used for the benefit of, or transferred to, an affiliate, the transaction will be treated as a transaction with that affiliate.[43] Finally, a savings association and its subsidiaries may not purchase a "low-quality asset" [44] from an affiliate, unless the purchase is pursuant to a qualifying purchase commitment, *i.e.*, the association or the subsidiary, pursuant to an independent credit evaluation, committed itself to purchase the asset prior to the time the asset was acquired by the affiliate.[45]

2. Section 23B of the Federal Reserve Act

Section 23B of the FRA [46] is a relatively new transactions with affiliates provision added by the CEBA.[47] The section augments section 23A by establishing a broad general rule that a wide range of affiliated party transactions, including but not limited to covered transactions, must be on terms at least as favorable to the savings association as those that would be available to non-affiliated companies.[48]

As applied to savings associations, section 23B covers various types of transactions between an association, and its subsidiaries, and an affiliate. For purposes of section 23B, the term "affiliate" has the same definition as found in section 23A, except that a "bank" is specifically excluded from the definition for purposes of section 23B.[49]

The transactions covered by section 23B include:

(A) "Covered transactions" that are subject to section 23A;

(B) A sale of securities or other assets to an affiliate including assets subject to an agreement to repurchase;

(C) A payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;

(D) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the association or to any other person; or

(E) Any transaction or series of transactions with a third party if an affiliate has a financial interest in the third party or if an affiliate is a participant in the transaction or series of transactions.

Finally, any transaction by an association or its subsidiary with any person will be deemed to be a transaction with an affiliate if any of the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate of the association.[50]

Section 23B requires that if a savings association and its subsidiaries engage in the foregoing types of affiliated transaction activities, they may do so only: (1) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the association, or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or (2) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good

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[39] 12 U.S.C. 372c(c)(2). The required level of collateral will depend upon the type of collateral. A 100 percent level is required where the collateral is composed of obligations of the United States or its agencies; for obligations fully guaranteed by the United States or its agencies as to principal and interest; for notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or for a segregated, earmarked deposit account with the savings association. Where the collateral is composed of obligations of any state or political subdivision thereof the required level is 110 percent; 120 percent for collateral composed of other debt instruments, including receivables; and 130 percent for collateral composed of stock, leases, or other real or personal property. 12 U.S.C. 371c(c)(1).

Low quality assets are not acceptable as collateral for an extensions of credit to an affiliate. 12 U.S.C. 371C(C)(3). The FRB also has indicated that mortgage servicing rights do not qualify as acceptable collateral for purposes of section 23A. Letter from Michael Bradfield to Gail Runnfelt, August 31, 1987. In addition, securities issued by an affiliate of a member bank are not eligible collateral. 12 U.S.C. 371c(c)(4). Collateral also must be replaced by additional eligible collateral where needed to keep the pecentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the inception of the transaction. 12 U.S.C. 371c(c)(2).

[40] 12 U.S.C. 371c(c)(5).

[41] As previously noted, this bar may not reach issuance of a guarantee, acceptance or letter of credit on behalf of an affiliate.

[42] 12 U.S.C. 371c(a)(4).

[43] 12 U.S.C. 371c(a)(2). This would cover, for example, the extension of credit to an unrelated third party in order to purchase property from an affiliate.

[44] A "low-quality asset" is an asset that falls into one or more of the following categories:

(A) An asset classified as "substandard," "doubtful," or "loss" or treated as "other loans especially mentioned" in the most recent report of examination or inspection of an affiliate prepared by a Federal or state supervisory agency;

(B) An asset in a nonaccrual status;

(C) An asset on which principal or interest payments are more than thirty days past due; or

(D) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

12 U.S.C. 371c(b)(10).

[45] 12 U.S.C. 371c(a)(3).

[46] 12 U.S.C. 371c–1.

[47] 12 U.S.C. 371c–1.

[48] The addition of section 23B to the regulatory scheme of transactions with affiliates has a rather interesting history. As described by one commentator:

In 1983 and 1984, Senate bills S. 1609 and S. 2851 proposed the expansion of financial services that would be offered by banks to include insurance underwriting and brokerage, real estate development, and certain securities activities, which would have required a repeal of certain Glass-Steagall Act restrictions. Both these bills included proposals to amend the Federal Reserve Act by adding a new section 23B, which would supplement section 23A by providing further restrictions on banks and their affiliates. The purpose of this provision was to provide the Federal Reserve Board with greater flexibility in regulating conflicts of interest between banks and their holding company affiliates that would arise from the expanded services and operations that affiliates would be able to offer as a result of such legislation * * * Although these proposed bills * * * were not passed, section 23B resurfaced in [CEBA].

Miles, *supra*, at 478.

[49] 12 U.S.C. 371c–1(d)(1). Apparently, although by its terms section 23B does not recognize a "sister bank" exemption comparable to that contained in section 23A, the exclusion of "banks" from the definition of affiliate would accomplish the same result, but on a much larger scale, by excluding from the "affiliate" definition sister banks and affiliate banks in chain banking operations that are not otherwise eligible for the sister bank exemption of section 23A. In the thrift context, however, because section 11 of the HOLA specifies that savings associations are to be treated in the same manner as "member banks," not "banks", for purposes of sections 23A and 23B, savings associations apparently would not enjoy the same definitional exclusion from the scope of section 23B as provided to "banks."

[50] 12 U.S.C. 371c(a)(2).

faith would be offered to, or would apply to, nonaffiliated companies.[51]

In addition to the above referenced transactions, section 23B prohibits several other specific types of transactions between a savings association, or its subsidiary, and its affiliates. For example, neither an association nor its subsidiaries may purchase as fiduciary any securities or other assets from an affiliate unless the purchase is permitted under the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction governing the fiduciary relationship.[52] In addition, an association and its subsidiaries generally are further barred from knowingly purchasing or otherwise acquiring, whether acting as principal or fiduciary, during the existence of any underwriting or selling syndicate, any security where a principal underwriter of the security is an affiliate of the association.[53] Finally, a savings association or any subsidiary or affiliate of the association may not publish any advertisement or enter into any agreement stating or suggesting that the association shall in any way be responsible for the obligations of an affiliate.[54]

B. The Proposal

I. Overview

Pursuant to the Office's authority under section 11 of the HOLA, the proposal applies sections 23A and 23B to savings associations, incorporates extensive changes in terminology to reflect the application of those provisions to savings associations, and contains the various special provisions of section 11 that are uniquely applicable to thrifts. Moreover, pursuant to the Office's authority under section 11(a)(4), which provides, "[t]he Director may impose such additional restrictions on any transaction between any savings association and any affiliate of such savings association as the Director determines to be necessary to protect the safety and soundness of the savings association," [55] the proposal differs from, and in so differing is more stringent than, the statutory provisions of sections 23A and 23B in several ways.

The proposal is drafted as a comprehensive set of restrictions and prohibitions on transactions with affiliates, rather than as piecemeal supplements to sections 23A and 23B, because of the pervasive and often complex nature of the differences between those sections on the one hand and the different and more rigorous treatment applicable pursuant to section 11 of the HOLA and under the various provisions of this proposal, on the other hand.[56]

Any other approach could be confusing and create impediments to achieving compliance by savings associations with the new standards imposed by section 11 of the HOLA.

The Office believes that the additional restrictions and safeguards imposed in the current proposal pursuant to section 11(a)(4) are appropriate given the unique nature of the thrift industry and the experiences of the agency with affiliate transactions in the thrift context. The restrictions proposed by the Office are intended to tighten the limitations and prohibitions of sections 23A and 23B in the thrift context, to affirm coverage of certain transactions where the language of those provisions is not specifically tailored to apply to thrifts, and/or to otherwise clarify the extent of coverage as applied to thrifts. As a result of the imposition of these additional restrictions and safeguards, the provisions of section 23A and 23B will be made more stringent for thrifts in the following ways:

i. Treatment of thrift subsidiaries—the definition of "affiliate" would be broadened to include thrift subsidiaries that are not exclusively engaged in activities permissible for a Federal association;

ii. Transactions between a thrift subsidiary and unaffiliated persons—the proposal clarifies that transactions between either a thrift or a thrift subsidiary and an unaffiliated person that benefit an affiliate are included within the coverage of section 23A;

iii. Determination of control—the broader bases for the determination of control under 12 CFR part 574 are incorporated and added into the determination of control under section 23A for purposes of determining when a company is an "affiliate;"

iv. Section 23A calculations—clarification is provided regarding the proper method for determining an association's "aggregate amount of covered transactions" under section 23A; and

v. Recordkeeping and notice requirements—certain recordkeeping requirements are imposed on all transactions with affiliates involving thrifts, a prior notification requirement may be imposed on certain thrifts for their transaction with affiliates, and all thrifts are required to notify the Office of the type(s) of activities being conducted by their subsidiaries and whether such subsidiaries are to be treated as "affiliates" for purposes of the rule.

2. Discussion of Additional Restrictions and Safeguards

a. Treatment of Subsidiaries

Under the proposal, any savings association subsidiary that is not exclusively engaged in activities permissible for a Federal association generally will be treated as an "affiliate" subject to the limitations and prohibitions of sections 23A and 23B. Those subsidiaries engaged only in Federal savings association permissible activities would be treated as part of the parent thrift for purposes of transactions with affiliates controls, *provided*, the thrift controls the subsidiary and the voting stock of such subsidiary is eligible to be held only by savings association. Such a test will be applied for both Federal and state-chartered savings associations. In the latter case, since generally, section 222 of the FIRREA provides that state-chartered thrifts may not engage in any activities, or in any activity in an amount, that is

[51] 12 U.S.C. 371c–1(a)(1). For a discussion of the purpose of this safeguard see H.R. Rep. No. 261, 100th Cong., 1st Sess. 133 (1987).

[52] 12 U.S.C. 371c–1(b)(1)(A).

[53] 12 U.S.C. 371c–1(b)(1). This prohibition is not applicable, however, if the purchase or acquisition of the securities is approved, before the securities were initially offered for sale to the public, by a majority of the directors of the association who are not officers or employees of the association or of any affiliate involved. 12 U.S.C. 371c–1(b)(2).

[54] 12 U.S.C. 371c–1(c).

[55] 12 U.S.C. 1468(a)(4).

[56] In taking this approach, the Office has not sought to interpret the basic provisions of sections 23A and 23B and will apply the provisions of those sections to savings associations in the same manner and to the same extent as if the savings association were a member bank, as required by section 11 of the HOLA. The Office recognizes that sections 23A and 23B authorize the Federal Reserve Board, *inter alia*, to issue rules or orders to administer and carry out the purposes of the section and prevent evasions thereof. 12 U.S.C. 371c(e)(1) and 371c–1(e)(1). However, no such rules or orders exist at this time.

Until and unless the Federal Reserve Board promulgates regulations under sections 23A and 23B applicable to member banks, it is within the Office's general statutory authority under the HOLA to promulgate regulations under section 2, which incorporates sections 23A and 23B by reference. *See* 12 U.S.C. 1463(a). If the Federal Reserve Board later promulgates rules or interpretive orders implementing sections 23A and 23B, such rules or orders would be controlling with respect to savings associations to the same extent as applicable to member banks. However, such rules or orders would not limit the Office's authority to promulgate or continue the effectiveness of more stringent rules under section 11(a)(4) and rules implementing the special provisions of section 11(a)(1) applicable to savings associations. In this regard, this proposal differs from the application of sections 23A and 23B to member banks only as required or authorized by section 11 of HOLA.

not permissible for a Federal savings association,[57] the Office deems Federal association permissible activities to be an appropriate standard for determining whether, for purposes of transactions with affiliates controls, a thrift subsidiary should be treated as part of the parent thrift.

The activities permissible for a Federal association are generally set forth at sections 5(a)–(c) and 6 of the HOLA,[58] and the regulations promulgated thereunder. In connection with the proposal, the Office is aware that it may not always be easily determinable whether a thrift subsidiary's activities are permissible for a Federal association. In this regard, only those Federal association activities expressly provided by statute, *i.e.*, sections 5(a)–(c) and 6 of the HOLA, and regulations promulgated thereunder, and activities reasonably incident thereto, are relevant for purposes of determining whether a thrift subsidiary is engaged exclusively in such activities.

Notably, new section 28 of the FDIA,[59] as added by section 222 of the FIRREA, generally limits the activities of both savings associations and their subsidiaries to the list of activities permissible for Federal associations and Federal association service corporations, respectively. Accordingly, the activities of most thrift subsidiaries will fall into one, or both, of these categories. The result of the approach that the Office is adopting in the proposal is that any subsidiary now engaged in the services listed at 12 CFR 545.74(c)(2),[60] the real estate activities set forth at 12 CFR 545.74(c)(3), the preparation of state and Federal tax returns pursuant to 12 CFR 545.74(c)(5)(i), and the insurance related activities set forth at 12 CFR 545.74(c)(5)(ii) will be treated as an "affiliate" subject to the limitations and prohibitions of sections 23A and 23B. In this regard, as discussed more fully below,[61] the Office is establishing notification procedures requiring all savings associations to indicate the type(s) of activities being conducted by their subsidiaries and whether or not such subsidiaries are to be treated as "affiliates" for purposes of the rule.

With regard to the subsidiary proposal outlined herein, the Office particularly solicits comments as to whether it may tend to be too restrictive to the operations of thrifts and their subsidiaries. Commenters also are requested to address the risks and benefits that would be connected with an expansion of the types of subsidiaries that are not regulated as "affiliates." If commenters believe the approach embodied in the proposal is too restrictive, the Office strongly urges that comments address with specificity the particular activities and operations that are being conducted (or are sought to be conducted) that would be impeded by the proposed approach, the manner in and extent to which such activities would be limited, and the reasons why continuation of such activities and operations, absent the effect of the proposal, is particularly valuable to savings associations.

In this regard, the Office considered a number of other alternatives on the treatment of thrift subsidiaries and requests specific comment on the merits of adopting one of these alternative approaches instead of the proposal outlined above. Under one alternative considered by the Office, thrift subsidiaries engaged only in the activities permissible for a Federal association service corporation, *i.e.*, in activities that the Office has indicated by regulation are reasonably related to the activities of a Federal association, would be treated as part of the savings association for transactions with affiliates purposes, *provided*, the thrift controls such subsidiary and the voting stock of such subsidiary is eligible to be held only by savings associations. Any subsidiary not engaged exclusively in such activities would be deemed an "affiliate" of the thrift.

Under another approach, three categories of thrift subsidiaries would exist. First, those subsidiaries engaged only in activities permissible for a Federal savings association, that are more than 25 percent owned by the thrift, and all of the voting stock of which could only be owned by savings associations would not be treated as "affiliates" for transactions with affiliates purposes. Second, subsidiaries engaged in activities not permissible for a Federal association but that are otherwise engaged only in activities permissible for a Federal savings association service corporation, that are more than 25 percent owned by the thrift, and all of the voting stock of which could only be owned by savings associations, also would not be treated as "affiliates." However, transactions with such subsidiaries would be subject to an aggregate limitation of the greater of 10 percent of the association's capital stock and surplus or, if notice is provided to the District Director, an amount up to the difference between 3 percent of the association's total assets and the association's current outstanding investments in service corporations under section 5(c)(4)(B) of the HOLA.[62] Finally, thrift subsidiaries engaged in activities not permissible for a Federal association or Federal association service corporation would be treated as "affiliates" for transactions with affiliates purposes, except that any subsidiary of a state-chartered association whose activities have been specifically preapproved by the FDIC shall be treated as a subsidiary engaged in activities permissible for a Federal association service corporation, under the second category above.

A variation on the first alternative involved implementing the above outlined Federal association service corporation approach, with an additional provision that on a case-by-case basis the District Director may deem such a subsidiary an "affiliate" if its activities, level of activities, its condition or the condition of its parent thrift, or other supervisory reasons, warranted such treatment in order to protect the safety and soundness of the savings association.

Finally, the Office considered whether thrift subsidiaries should be treated any differently from bank subsidiaries, notwithstanding the wider scope of activities generally permissible for thrift subsidiaries. This approach would result in all thrift subsidiaries being excluded from treatment as an "affiliate."

b. Transactions Between a Thrift Subsidiary and Unaffiliated Persons

Another restriction added to clarify the application of sections 23A and 23B to thrift institutions is the inclusion of transactions between a thrift "subsidiary," as defined at 12 CFR 563.41(b)(4)(B), as proposed, and unaffiliated third parties where such transactions benefit an affiliate. *See* 12 CFR 563.41(a)(4) and 563.42(a)(3), as proposed. Significantly, the language of section 23A includes only transactions between the institution (*i.e.*, not its subsidiaries) and unaffiliated persons

[57] 12 U.S.C. 1831e(a).

[58] 12 U.S.C. 1464(a)–(c) and 1465, respectively.

[59] 12 U.S.C. 1831e.

[60] A thrift subsidiary providing such services only to its parent thrift would not be deemed to be engaged in an activity not permissible for a Federal association, by virtue of such activity. However, a thrift subsidiary providing such services to another thrift would not be deemed to be engaged exclusively in activities permissible for a Federal association. In this regard, under section 5, a Federal association may provide such services to itself and its affiliates, but not to other savings associations, whereas a Federal association service corporation may provide such services to its parent thrift and to other savings associations.

[61] *See infra*, section B.2.e., "Recordkeeping and Notice Requirements."

[62] 12 U.S.C. 1464(c)(4)(B).

where such transactions benefit an affiliate. See 12 U.S.C. 371c(a)(2). Transactions between a subsidiary and unaffiliated third parties that benefit an affiliate are not explicitly included within the coverage of section 23A. The proposal clarifies that such transactions are included within the coverage of the provision so as to prevent evasions of this safeguard.

c. Determination of Control

The Office has also expanded the determination of whether a company or shareholder is deemed to have control over another company, for purposes of section 23A, to include the determinations of control set forth in the Office's regulations at 12 CFR part 574. In this regard, the Office has retained the existing standard for the determination of control set forth in section 23A, at 12 U.S.C. 371c(b)(3)(A), and added thereto the reference to the control standards of part 574. *See* 12 CFR 563.41(b)(3)(A)(iii), as proposed. Significantly, this additional reference is appropriate in order to clarify those instances in the thrift context when a company will be deemed to be an "affiliate," and to the extent that the existing references to control do not encompass certain control situations in the thrift context, *e.g.*, where a company owning between 10 percent and 25 percent of the voting stock of an institution or holding company cannot rebut the presumption of control under 12 CFR 574.4(b), the reference to part 574 serves as an additional restriction pursuant to section 11(a)(4) of the HOLA.

d. Section 23A Calculations

As a result of a significant number of inquiries from savings associations and savings and loan holding companies regarding the computation of the quantitative limits under section 23A, the Office, in consultation with the staff of the FRB, has attempted to provide additional clarification to thrifts on the calculations applicable in determining what is included with an association's "aggregate amount of covered transactions." Section 23A defines the term "aggregate amount of covered transactions" to mean the amount of the covered transactions in which the association or its subsidiary is about to engage added to the current amount of all of such association's outstanding covered transactions. For this purpose, as already noted above, "hard" assets, *e.g.*, buildings and office equipment, are generally counted at their cost, minus depreciation taken for federal income tax purposes, while amortizing assets, such as loans, are counted in decreasing amounts as they amortize. In addition, where assets purchased are subsequently sold, they are subtracted from the amount of the balance of an association's transactions with the affiliate from which the asset was purchased, and from the association's overall total of transactions with affiliates. Accordingly, the Office's proposal, at 12 CFR 563.41(b)(8), as proposed, reflects these standards for section 23A calculations.

It is also the position of the Office that the term "aggregate amount of covered transactions" includes all covered transactions entered into and executed before August 9, 1989, *i.e.*, the date of enactment of the FIRREA, subject, of course, to the above-referenced standards for section 23A calculations. In this regard, if a savings association currently exceeds the section 23A quantitative limitations as a result of pre-FIRREA transactions, it will be prohibited from engaging in any more covered transactions with such affiliate or all affiliates, if appropriate, until such time as it comes into compliance with the applicable quantitative limitations of section 23A. In addition, the savings association should explore means that are reasonable and practicable to bring such pre-FIRREA transactions into compliance with the requirements of section 23A.

e. Recordkeeping and Notice Requirements

A final restriction imposed on savings associations under the current proposal is the recordkeeping and notice requirements of 12 CFR 563.41(e), as proposed. These provisions impose recordkeeping requirements on all transactions with affiliates involving a savings association or its subsidiaries. Such records should include, among other things, the identity of the parties to the transaction, the dollar amount of the transaction, including an indication of the amounts that are subject to the limitations of sections 23A, and an indication of whether the transaction involved a low-quality asset and the amount of any collateral involved in the transaction. In addition, the provision enables the District Director to require prior notification for certain transactions with affiliates. Such prior notification may be required by the District Director in the case of a savings association that has been chartered less than 2 years or that has undergone a change in control within the preceding 2 years, that is not meeting all of its applicable regulatory capital requirements, that has entered into a consent to merge, supervisory agreement or cease and desist order within the preceding 2 years, or that the District Director has advised is the subject of supervisory concern or that requires more than the normal supervision because of its financial condition.

Section 563.41(e), as proposed, also establishes a notification procedure requiring all savings associations, within 30 days after the effective date of a final rule, to provide the appropriate District Director with notice of the activities being conducted by each of their subsidiaries and indicating whether, under the rule as implemented, each such subsidiary is an "affiliate". In addition, if the activities of a subsidiary change so that its status as an "affiliate" of the association changes, or if a savings association establishes a new subsidiary, then the proposal requires a savings association to notify its District Director of the new activities and status of the existing subsidiary, or of the activities and status of a new subsidiary, within 15 days after such change in status or creation of the new subsidiary.[63] Under the proposal, all determinations with respect to the activities that are being conducted by a thrift subsidiary and the "affiliate" status of a thrift subsidiary are subject to verification upon examination of the association by the Office.

f. Other Issues

In addition to soliciting comments on the treatment of thrift subsidiaries, the Office requests commenters to address whether expanding the definition of the term "covered transaction" in 12 CFR 563.41, as proposed, to include the payment of money to an affiliate under contract, lease, or otherwise (*e.g.*, pursuant to management contracts, etc.),[64] would impose an undue hardship on savings associations in relation to the benefits that would be derived in ensuring that all payments from thrifts to affiliates would be subject to the transactions with affiliates limitations. The Office notes that transactions of this type previously were subject to

[63] In order to reduce the burden imposed on savings associations under this provision, in lieu of a separate filing, a savings association may satisfy the notification requirement by forwarding a cover letter describing the "affiliate" status of the subsidiary and attaching a copy of a notice or filing required by the Office or the Federal Deposit Insurance Corporation as a result of the new activity of an existing subsidiary or the creation of a new subsidiary, *e.g.*, a notice required pursuant to section 18(m) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(m).

[64] However, pursuant to section 304 of the FIRREA, it is not intended that the addition of this provision would prevent a savings association from purchasing mortgages from a mortgage banking affiliate as described in 12 CFR 250.250.

transactions with affiliates controls in the case of thrift subsidiaries of savings and loan holding companies pursuant to former section 408(d) of the National Housing Act.[65]

3. Transition Rule

In addition to the transition rule for a thrift's purchase of mortgages from a mortgage-banking affiliate, provided for in section 304 of the FIRREA and reflected in previous amendments to 12 CFR 563.41 (which would be merged into 12 CFR 563.43 if the current proposal is adopted prior to adoption of regulatory amendments to revise the Conflicts Rules and to implement section 22(h) of the FRA), the Office will apply the provisions of sections 23A and 23B of the FRA, and the regulations proposed herein, to any transaction entered into after the date of enactment of the FIRREA [August 9, 1989], except for transactions which were the subject of a legally binding written contract or commitment entered into prior to August 9, 1989.[66]

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

Executive Order 12291

The Office has determined that this proposal does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collection of information in this proposed regulation is in 12 CFR 563.41(e), as proposed. This information is required by the Office of Thrift Supervision to assure that savings associations keep accurate records of the types and amounts of transactions with affiliates in which they engage for the purpose of determining their aggregate amount of covered transactions under section 23A and for determining whether the savings association has properly accounted for and accurately characterized its transactions with affiliates. In addition, the prior notification requirement for transactions involving certain savings associations in the proposal is required to ensure that the District Director has an opportunity to review the safety and soundness of transactions with affiliates involving savings associations that may be of supervisory concern, *i.e.*, savings associations that have undergone a recent change of control, that are not meeting their regulatory capital requirements, that have recently entered into a consent to merge, supervisory agreement or cease and desist order, or that are otherwise the subject of supervisory concern or that require more than normal supervision because of their financial condition. Finally, the notification procedure requiring all savings associations to notify their District Director of the activities and "affiliate" status of their subsidiaries is necessary to ensure that savings associations correctly identify which subsidiaries are to be treated as "affiliates" for purposes of compliance with the requirements of sections 23A and 23B, as implemented under the proposal. In this regard, due to the fact that the Office will accept filings required pursuant to other statutory requirements in order to satisfy this requirement with respect to the new activities of an existing subsidiary or the creation of a new subsidiary, the ongoing paperwork burden imposed on savings associations under this procedural requirement is significantly reduced.

The likely respondents include all savings associations engaged in transactions with affiliates.

Estimated total annual reporting burden: 8,800 hours.

Estimated average annual burden hours per respondent: 4 hours.

Estimated number of respondents: 2,200 respondents.

Estimated annual frequency of responses: 2 responses.

List of Subjects in 12 CFR Part 563

Currency, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office hereby proposes to amend part 563, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER—D REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

2. Section 563.41 is amended by redesignating paragraphs (b) and (c) as new paragraphs (e) and (f), respectively, of § 563.43 of this part; and § 563.41 is removed.

3. Revise the title of § 563.43 to read as follows:

§ 563.43 Restrictions on loans, other investments, and real and personal property transactions involving affiliated persons.

4. A new § 563.41 is added to read as follows:

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[65] 12 U.S.C. 1730a(d).

[66] *Cf.*, section 410(c) of Pub. L. 97-320 (1982). If a legally binding contract or commitment was entered into, but not consummated, prior to enactment of the FIRREA, and the contract or commitment is consummated post-enactment, then the contract or commitment is subject to the applicable pre-FIRREA transactions with affiliates limitations, *i.e.*, sections 408(d), (p) or (t) of the NHA, formerly 12 U.S.C. 1730a(d), (p), and (t), and/or the Conflicts Rules, 12 CFR 563.41 and 563.43. With regard to whether a contract or commitment was legally binding prior to enactment of the FIRREA, it is incumbent upon the association to demonstrate that the contract or commitment represents a legally binding contract or commitment to enter into the transaction (*e.g.*, a written agreement or other file documentation). Where doubt exists as to the legally binding nature of the contract or commitment, supervisory personnel may require an opinion of counsel.

In general, loan commitments for which the borrower has paid no fee to the thrift should be reviewed closely to determine if a binding commitment exists. Such agreements typically contain broad provisions permitting the lenders to decline to fund on subjective grounds that effectively render the commitment unenforceable. In absence of such a fee, the association must overcome the strong presumption that the commitment is not legally binding with convincing evidence. Likewise, associations will be required to provide such evidence with respect to contracts that contain broad "out" provisions that may be exercised by the association.

Finally, renewals or extensions of pre-FIRREA contracts or commitments must conform to the transactions with affiliates limitations set forth under FIRREA if such renewal or extension was made on or after the date of enactment of the FIRREA (August 9, 1989).

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

(a) *Restrictions on transactions with affiliates and subsidiaries.* A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if such transaction is permissible under section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and the additional restrictions set forth herein, as follows:

(1) A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if:

(i) In the case of any affiliate, the aggregate amount of covered transactions of the savings association and its subsidiaries shall not exceed 10 per centum of the capital stock and surplus of the savings association; and

(ii) In the case of all affiliates, the aggregate amount of covered transactions of the savings association and its subsidiaries shall not exceed 20 per centum of the capital stock and surplus of the savings association.

(2) No loan or extension of credit may be made by a savings association and its subsidiaries to any affiliate unless such affiliate is engaged solely in activities described in section 10(c)(2)(F)(i) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(2)(F)(i), as defined in 12 CFR 584.2-2.

(3) A savings association and its subsidiaries may not purchase or invest in the securities of any affiliate.

(4) For the purpose of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate to the extent that proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(5) A savings association and its subsidiaries may not purchase a low-quality asset from an affiliate unless the association or such subsidiary, pursuant to an independent credit evaluation, committed itself to purchase such asset prior to the time such asset was acquired by the affiliate.

(6) Any covered transactions and any transactions exempt under paragraph (d) of this section and section 23A(d) of the Federal Reserve Act, 12 U.S.C. 371c(d), between a savings association and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practices.

(b) *Definitions.* For the purpose of this section:

(1) The term *affiliate* with respect to a savings association means:

(i) Any company that controls the savings association and any other company that is controlled by the company that controls the savings association;

(ii) Any company controlled by the savings association except a company excluded from the definition of "affiliate" under paragraph (b)(2)(i) of this section;

(iii) A bank subsidiary of the savings association;

(iv) Any company:

(A) That is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the savings association or any company that controls the savings association; or

(B) In which a majority of its directors or trustees constitute a majority of the persons holding any such office with the savings association or any company that controls the savings association;

(v)(A) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the savings association or any subsidiary or affiliate of the savings association; or

(B) Any investment company with respect to which a savings association or any affiliate thereof is an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(20); and

(vi) Any company that the Office or the Board of Governors of the Federal Reserve System determines by regulation or order to have a relationship with the savings association or any subsidiary or affiliate or the savings association such that covered transactions by the savings association or its subsidiary with that company may be affected by the relationship to the detriment of the savings association or its subsidiary.

(2) The following shall not be considered to be an affiliate:

(i) Any company described in paragraph (b)(4)(ii) of this section, that is a subsidiary of a savings association; provided that any company with respect to which a determination is made by the Board of Governors of the Federal Reserve System under section 23A(b)(1)(E) of the Federal Reserve Act, 12 U.S.C. 371c(b)(1)(E), shall not be deemed to be a subsidiary and shall be treated as an affiliate;

(ii) Any company engaged solely in holding the premises of the savings association;

(iii) Any company engaged solely in conducting a safe deposit business;

(iv) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(v) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of such law or regulation, for a period of two years from the date of the exercise of such rights, subject, upon application, to authorization by the Office for good cause shown of extensions of time for not more than one year at a time, but such extensions in the aggregate shall not exceed three years.

(3)(i) A company or shareholder shall be deemed to have control over another company if:

(A) The company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

(B) The company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or

(C) The company or shareholder would be deemed to control the company under § 574.4(a) of this chapter, or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, such control has not been rebutted; and

(ii) Notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (b)(1)(iv) of this section.

(4) The term "subsidiary":

(i) With respect to a specified company, other than a savings association, means a company that is controlled, directly or indirectly, by such specified company; and

(ii) With respect to a savings association, means a company:

(A) That is engaged solely in activities of the type that a Federal savings association may directly conduct under section 5(c) of the Home Owners' Loan Act, 12 U.S.C. 1464(c);

(B) Which the savings association controls; and

(C) The voting stock of which is eligible to be held only by savings associations;

Provided, however, that for purposes of paragraph (a)(3) of this section, a company which the savings association controls shall be deemed to be a subsidiary of the savings association and not an affiliate.

(5) The term "savings association" has the same meaning as that term is defined at § 583.21 of this chapter; and the term "bank" includes a state bank, national bank, banking association, or trust company.

(6) The term "company" means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes a "savings association" and a "bank".

(7) The term "covered transaction" means with respect to an affiliate of a savings association:

(i) A loan or extension of credit to the affiliate;

(ii) A purchase of or an investment in securities issued by the affiliate;

(iii) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Board of Governors of the Federal Reserve System by order or regulation;

(iv) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company; or

(v) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate.

(8) The term "aggregate amount of covered transactions" means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions. For this purpose, the outstanding balance of any credits extended to an affiliate shall be added to the value of any asset acquired from such affiliate (or all such affiliates), as reflected on the financial records of the savings association or its subsidiaries, subject to the following conditions:

(i) With respect to a loan or extension of credit made by the savings association or its subsidiaries:

(A) Any amounts of principal that have been amortized may be deducted from the "aggregate amount of covered transactions"; and

(B) Write-offs or write-downs may not be deducted from the "aggregate amount of covered transactions."

(ii) With respect to a purchase of assets by the savings association or its subsidiaries:

(A) Any amounts of depreciation that have been deducted from the cost of an asset for Federal income tax purposes by the purchaser may be deducted from the "aggregate amount of covered transactions"; and

(B) Upon the sale of an asset that was previously purchased in a covered transaction, the "aggregate amount of covered transactions" shall be reduced by an amount equal to the purchase price of the asset at the time of the covered transaction less depreciation subsequently taken and previously deducted from the "aggregate amount of covered transactions."

(9) The term "securities" means stocks, bonds, debentures, notes, and other similar obligations.

(10) The term "low-quality asset" means an asset that falls in any one or more of the following categories:

(i) An asset classified as "substandard", "doubtful", or "loss" or treated as "other loans especially mentioned" in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency;

(ii) An asset in a nonaccrual status;

(iii) An asset on which principal or interest payments are more than thirty days past due; or

(iv) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(c) *Collateral for certain transactions with affiliates.* (1) Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a savings association or its subsidiary shall be secured at the time of the transaction by collateral having a market value equal to:

(i) 100 per centum of the amount of such loan or extension or credit, guarantee, acceptance, or letter of credit, if the collateral is composed of:

(A) Obligations of the United States or its agencies;

(B) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(C) Notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Home Loan Bank or Federal Reserve Bank; or

(D) A segregated, earmarked deposit account with the savings association;

(ii) 110 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of obligations of any State or political subdivision of any State;

(iii) 120 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of other debt instruments, including receivables; or

(iv) 130 per centum of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of stock, leases, or other real or personal property.

(2) Any such collateral that is subsequently retired or amortized shall be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the inception of the transaction.

(3) A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(4) The securities issued by an affiliate of the savings association shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, that affiliate or any other affiliate of the savings association.

(5) The collateral requirements of this paragraph shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.

(d) *Exemptions.* The provisions of this section, except paragraph (a)(6) of this section, shall not be applicable to:

(1) Any transaction, subject to the prohibition contained in paragraph (a)(5) of this section, with another savings association or bank that is at least 80 percent owned by the same holding company that also controls a bank, if every savings association and every bank owned by such company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill; and

(i) Which other savings association or bank controls 80 per centum or more of the voting shares of the savings association;

(ii) In which other savings association or bank the savings association controls 80 per centum or more of the voting shares; or

(iii) In which other savings association or bank 80 per centum or more of the voting shares are controlled by the company that controls 80 per centum or more of the voting shares of the savings association;

(2) Making deposits in an affiliated bank or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the Office or the Board of Governors of the Federal Reserve System may prescribe by regulation or order;

(3) Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(4) Subject to paragraph (a)(2) of this section, making a loan or extension of credit to, or issuing a guarantee, acceptance, or letter of credit on behalf of, an affiliate, if such loan, extension of credit, guarantee, acceptance, or letter of credit is fully secured by:

(i) Obligations of the United States or its agencies;

(ii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iii) A segregated, earmarked deposit account with the savings association;

(5) Purchasing securities issued by any company of the type described in section 4(c)(1) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(1);

(6) Purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in paragraph (a)(5) of this section, purchasing loans on a nonrecourse basis from affiliated banks; and

(7) Purchasing from an affiliate a loan or extension of credit that was originated by the savings association and sold to the affiliate subject to a repurchase agreement or with recourse.

(e) *Recordkeeping and notice requirements.* (1) With respect to all transactions between a savings association and its subsidiaries and the association's affiliates and subsidiaries, the association shall make and retain records, which in reasonable detail, accurately reflect such transactions. Such records shall, at a minimum:

(i) Identify the affiliate or subsidiary;

(ii) Indicate the dollar amount of such transaction and reflect that such amount is within the applicable quantitative limitations specified in this section or that the transaction is not subject to such limitations;

(iii) Indicate whether the transaction involves a low-quality asset as that term is defined in paragraph (b)(10) of this section;

(iv) Indicate the type and amount of any collateral involved in the transaction;

(v) Demonstrate that the terms and circumstances of the transaction satisfy the requirements of paragraph (b)(7) of this section; and

(vi) Be readily accessible for examination and other supervisory purposes.

(2) Notwithstanding paragraphs (a) through (d) of this section, and except with respect to transactions of the type described in 12 CFR 250.250, the District Director may require prior notification by a savings association and its subsidiaries of any and all transactions with any or all of such association's affiliates or subsidiaries under the following circumstances:

(i) A de novo savings association that commenced operations or an association that has been the subject of an application or notice under part 574 of this chapter that was approved during the preceding two-year period; and

(ii) A savings association that:

(A) Is not meeting all of its regulatory capital requirements;

(B) Has entered into a consent to merge, a supervisory agreement, or cease and desist order, during the preceding two-year period; or

(C) Which the District Director determines is otherwise the subject of generalized or specific supervisory concern or that requires more than normal supervision because of its financial condition, past practices or other factors, and the District Director specifies the basis or bases for such concern in the written notice sent to the institution.

(iii) Upon receipt of written notice from the District Director identifying one or more of the circumstances described in paragraph (e)(2)(ii) of this section and stating that the District Director has determined that prior notification by a savings association will be required pursuant to this subsection, such association shall provide, no later than 10 days prior to entering into any transaction for which prior notification has been required, written notice to the District Director containing a full description of the proposed transaction. If no objections are raised by the District Director during such 10-day period, the association or its subsidiaries may proceed with the proposed transaction.

(3)(i) Within 30 days after [the effective date of a final rule], each savings association must file a notice with its District Director indicating the activities that are being conducted by each of its service corporations, including a brief description of such activities, and whether, based on such activities, each such service corporation is a "subsidiary" of the savings association, within the meaning of paragraph (b)(4)(ii) of this section; and

(ii) Within 15 days after:

(A) The date a service corporation of a savings association changes its activities such that the status of the service corporation as a "subsidiary" of the savings association is changed, pursuant to paragraph (b)(4)(ii) of this section, or

(B) The date of establishment of a new service corporation of a savings association,

Each savings association must file a notice with its District Director indicating the activities that are being conducted by such service corporation, including a brief description of the activities, and whether, based on such activities, such service corporation is a "subsidiary" of the savings association, within the meaning of paragraph (b)(4)(ii) of this section.

5. Section 563.42 is added to read as follows:

§ 563.42 Additional standards applicable to transactions with affiliates and subsidiaries.

(a) *In general.* A savings association and its subsidiaries may engage in a transaction with an affiliate only if such transaction is permissible under section 23B of the Federal Reserve Act, 12 U.S.C. 371c–1, and the additional restrictions set forth herein, as follows:

(1) *Standards.* A savings association and its subsidiaries may engage in any of the transactions described in paragraph (a)(2) of this section only:

(i) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such association or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies; or

(ii) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

(2) *Transactions covered.* Paragraph (a)(1) of this section applies to the following:

(i) Any covered transaction with an affiliate.

(ii) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase.

(iii) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise.

(iv) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the savings association or to any other person.

(v) Any transaction or series of transactions with a third party:

(A) If an affiliate has a financial interest in the third party; or

(B) If an affiliate is a participant in such transaction or series of transactions.

(3) *Transactions that benefit an affiliate.* For the purpose of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate of such association if any of the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(b) *Prohibited transactions.*

(1) *In general.* A savings association and its subsidiaries:

(i) Shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted:

(A) Under the instrument creating the fiduciary relationship;

(B) By court order; or

(C) By law of the jurisdiction governing the fiduciary relationship; and

(ii) Whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such association.

(2) *Exception.* Paragraph (b)(1)(ii) of this section shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the savings association who are not officers or employees of the association or any affiliate thereof.

(c) *Advertising restriction.* A savings association and its subsidiaries and any affiliate of a savings association shall not publish any advertisement or enter into any agreement stating or suggesting that the association shall in any way be responsible for the obligations of its affiliates.

(d) *Definitions.* For the purpose of this section:

(1) The terms "affiliate," "bank," "covered transaction," "savings association," and "subsidiary" have the meaning given to each term in § 563.41 of this part.

(2) The term "security" has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10); and

(3) The term "principal underwriter" means any underwriter who, in connection with a primary distribution of securities—

(i) Is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) Acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another under writerparticipating in the distribution.

Dated: March 16, 1990.

By the Office of Thrift Supervision.

Salvatore R. Martoche,

Acting Director.

Jonathan Fiechter,

Senior Deputy Director, Supervision/Policy.

[FR Doc. 90–6557 Filed 3–26–90; 8:45 am]

BILLING CODE 6720–01–M

federal register

Tuesday
March 27, 1990

Part III

Department of Justice

Federal Prison Industries, Inc.

28 CFR Part 345

Work and Compensation; Overtime Pay; Rule

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

28 CFR Part 345

Work and Compensation; Overtime Pay

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, Federal Prison Industries, Inc. (UNICOR), is amending its rule on Work and Compensation to establish overtime pay for inmates at a rate of 2 times the hourly or unit rate. This amendment is made to bring the rule into conformance with UNICOR procedures.

EFFECTIVE DATES: March 27, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Federal Prison Industries, Inc. (UNICOR), is amending its rule on Work and Compensation to establish overtime pay for inmates at a rate of 2 times the hourly or unit rate. A final rule on this subject was published in the **Federal Register** September 30, 1983 (48 FR 45047). The rate cited for overtime pay in that rule was 1.5 times the hourly or unit rate. UNICOR has since established a higher overtime rate, and consequently is amending the reference to the rate and the accompanying example for calculating overtime earnings. In addition, this document makes an editorial change by revising the word "insure" to read "ensure".

Because this rule imposes no further restrictions on inmates and merely reflects existing administrative procedures, UNICOR finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

UNICOR has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 345

Prisoners, Wages.

Dated: March 16, 1990.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR chapter III is amended as set forth below.

PART 345—WORK AND COMPENSATION

1. The authority citation for 28 CFR part 345 continues to read as follows:

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

2. In § 345.19, the introductory text is amended by revising in the first sentence the phrase "1.5 time" to read "2 times", paragraph (c) is amended by revising in the second sentence the word "insure" to read "ensure", and paragraph (b) is revised to read as follows:

§ 345.19 Overtime compensation.

* * * * *

(b) For individual piece workers, overtime earnings are determined by the amount of total piece work earnings for the day divided by the total number of hours worked that day. This rate is then doubled and multiplied by the number of hours worked during the overtime period to get the total overtime wages. The premium portion of overtime is equal to one half the total overtime wage.

Example: Assume a scheduled workday of 7 hours in this example. Piece worker works 10 hours (3 hours overtime) completing 70 units at 10¢ per unit. Overtime wages would be determined as follows:

STEP 1:

Total Units (70) x Rate Per Unit (10¢) = Average Hourly Rate (70¢)
Number of Hours Worked (10)

STEP 2:

Average Hourly Wage (70¢) x Overtime Factor (2) = Overtime Hourly Rate ($1.40)

STEP 3

Overtime Hourly Rate ($1.40) x Number of Hours Worked (3) = Overtime Pay ($4.20)

An inmate on a standard pay plan during the regular workday who works overtime under an individual incentive pay plan shall receive piece work earnings plus the standard hourly wage for the job being worked on overtime status.

* * * * *

[FR Doc. 90–6881 Filed 3–26–90; 8:45 am]

BILLING CODE 4410–05–M

federal register

Tuesday
March 27, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of the Salt Lake City Terminal Control Area; UT; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-2]

Alteration of the Salt Lake City Terminal Control Area; UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Salt Lake City, UT, Terminal Control Area (TCA). This action will adjust Area A and Area C by modifying their adjacent boundaries. This modification of the Salt Lake City TCA is necessary to allow additional airspace for visual flight rules (VFR) operation below the floor of the TCA southwest of Salt Lake City while providing increased airspace for maneuvering and terrain clearance. This action will enhance air traffic procedures and simplify VFR transient operations outside TCA airspace.

EFFECTIVE DATES: 0901 utc, May 3, 1990.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On June 23, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Salt Lake City TCA and revoke the Salt Lake City International Airport, Airport Radar Service Area, UT (54 FR 26680). The FAA, after carefully considering all comments received and making alterations where appropriate, adopted the proposal and published the final rule in the October 26, 1989, issue of the **Federal Register** (54 FR 43786) with an effective date of November 16, 1989.

Through actual utilization and after joint coordination with the FAA, local user groups, and concerned pilots in the Salt Lake City area, it was determined that the boundaries of Areas A and C could be modified to allow additional terrain clearance for VFR operations within the southwest quadrant of the TCA. This action will not adversely affect instrument flight rules (IFR) operations contained within the surface area of the TCA (Area A), but will add substantial benefits to VFR operations within the affected area through increased airspace for terrain and TCA avoidance. This action will also reduce controller workload. Section 71.401 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the TCA at Salt Lake City, UT. This action will alter the boundaries of Area A and Area C to allow additional terrain clearance for VFR operations within the southwest quadrant of the TCA. The southwestern boundary of Area A will be moved to the north and incorporated into the northern boundary of Area C. This action will enhance air traffic procedures and simplify VFR transient operations outside TCA airspace. This action removes a small area from the TCA and does not establish any new TCA or other controlled airspace.

This alteration will better serve the users, as well as the FAA, by providing airspace configured congruent with the terrain leaving sufficient airspace for nonparticipating aircraft to maneuver. The FAA has determined that modifying the TCA at the Salt Lake City International Airport is in the interest of the efficient use of airspace and will not result in any reduction in the protection provided by the TCA for operations in the terminal area.

Regulatory Evaluation Summary

The modification to the Salt Lake City International Airport TCA is intended to improve the utility of the affected airspace. This action to modify the boundaries of Area A and Area C is not expected to result in any costs associated with a realignment of controlled airspace. The affected airspace currently does not provide adequate terrain clearance to allow necessary maneuvering about the affected area. Adjusting the TCA boundary will alter this situation. Reconfiguring the TCA boundaries to more accurately reflect the terrain characteristics will improve the efficiency of TCA operations. Various users, especially the VFR operators transitioning below the floor of the TCA in this area, will benefit from the realignment of this airspace.

The FAA has determined that the economic impact of this rule is so minimal as not to require further regulatory evaluation. A copy of the regulatory evaluation for the original Salt Lake City International Airport TCA is available for review in FAA Airspace Docket No. 88-AWA-9.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Only those unscheduled aircraft operators without the capability of operating under IFR conditions would be potentially impacted by the rule. The FAA believes that all of the potentially impacted unscheduled aircraft operators are already equipped to operate under IFR conditions. This is because such operators fly regularly around airports where radar approach control services have been established. For these reasons, the FAA certifies that this amendment will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

International Trade Impact Assessment

This final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (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). It is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

Justification for Proceeding to Final Rule

Prior to this amendment, the current Salt Lake City TCA design was published in the **Federal Register** for public notice and comment. The FAA received many comments suggesting changes to the lateral boundaries of the TCA, including changes to Areas A and C. This amendment changes Areas A and C by reducing the amount of TCA airspace within those areas. This amendment is based on the public comments received on the Notice, as well as on the comments and suggestions offered by the local aviation groups and airspace users. Therefore, I find that further notice and public procedure hereon, under 5 U.S.C. 553(b), are unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control 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), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.403(b) [Amended]

2. Section 71.403(b) is amended as follows:

Salt Lake City, UT [Amended]

By removing Areas A and C and substituting the following:

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at a point where the 13-mile arc of the Salt Lake City International Airport Runway 16 ILS (I–BNT) localizer/distance measuring equipment (LOC/DME) antenna intercepts Interstate 15 (I–15), extending south on I–15 until intercepting the Salt Lake City International Airport Airport Traffic Area (ATA), extending south along the Salt Lake City International ATA boundary until intercepting I–15, extending south on I–15 until intercepting the 11-mile arc of the I–BNT LOC/DME antenna clockwise until intercepting the Union Pacific railroad tracks, extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT LOC/DME antenna clockwise until the point of beginning, excluding that airspace below 5,300 feet MSL west of I–15 bounded on the south by Cudahy Lane, on the west by Redwood Road until intercepting the power transmission lines, extending northeast along the power transmission lines until intercepting I–15 and excluding Area C described hereinafter.

Area C. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I–BNT LOC/DME antenna intercepts the Union Pacific railroad tracks, extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT LOC/DME antenna clockwise until a point at lat. 40°46'30" N., long. 112°14'45" W., extending east to the bend on I–80 at lat. 40°46'30" N., long. 112°08'45" W., then southeast to the drive-in theater north of the city of Magna at lat. 40°43'00" N., long. 112°04'45" W., then southeast to the water tank at lat. 40°40'00" N., long. 112°03'30" W., extending southeast to a point at lat. 40°39'20" N., long. 112°02'30" W., extending east to a point at lat. 40°39'20" N., long. 111°58'10" W., extending south until intercepting the 11-mile arc of the I–BNT LOC/DME antenna, then counterclockwise until intercepting I–15, extending south on I–15 until intercepting a line at lat. 40°27'30" N., extending west on lat. 40°27'30" N., until a point at lat. 40°27'30" N., long. 112°00'30" N., extending north to a point at lat. 40°35'30" N., long. 112°00'00" W., on the 11-mile arc of I–BNT LOC/DME antenna clockwise until the point of beginning.

Issued in Washington, DC, on March 20, 1990.

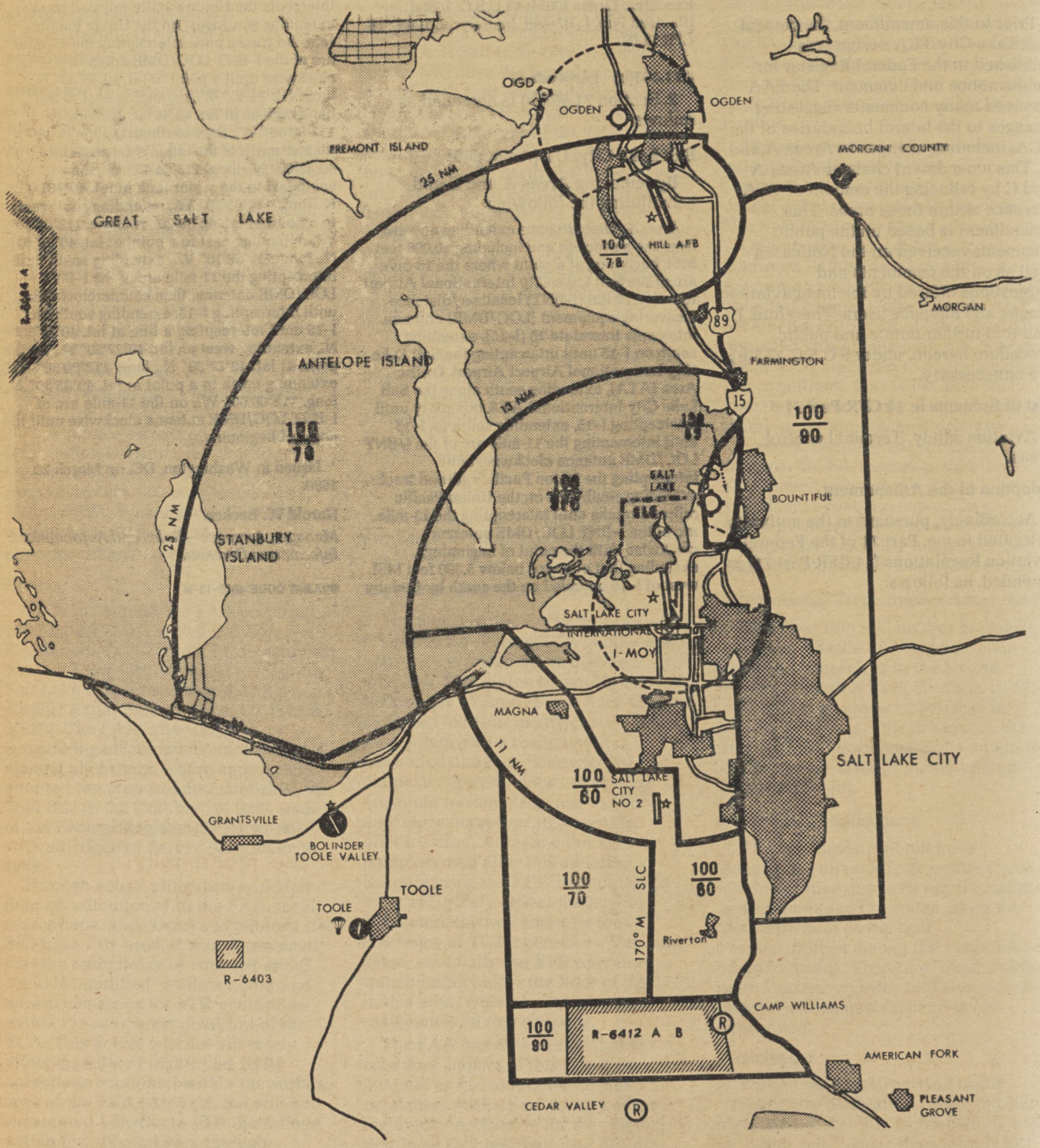
Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

BILLING CODE 4910–13–M

TERMINAL CONTROL AREA
SALT LAKE CITY, UTAH
SALT LAKE CITY INTERNATIONAL AIRPORT

(NOT TO BE USED FOR NAVIGATION)



[FR Doc. 90-6857 Filed 3-26-90; 8:45 am]

BILLING CODE 4910-13-C

federal register

Tuesday
March 27, 1990

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

Termination of the Multifamily Coinsurance Program; Notice of Proposed Rule Making

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

[Docket No. R-90-1471; FR-2763-P-01]

RIN 2502-AE85

Termination of the Multifamily Coinsurance Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Proposed Rule Making.

SUMMARY: This rule proposes termination of the authority currently set out at 25 CFR parts 251, 252 and 255 providing for FHA insurance of loans covering multifamily housing on a coinsured basis. The purpose of the rule is to terminate a program that has been found by the Department, after extensive analysis, to be structurally flawed and fundamentally unsound.

DATES: Comment Due Date: May 29, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755–2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202) 755–7084).

FOR FURTHER INFORMATION CONTACT: Matthew C. Andrea, Jr., Acting Director, Procedures and Evaluation Division, Office of Multifamily Coinsurance Programs, Room 6138, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–4956. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Coinsurance was authorized under the Housing and Urban Development Act of 1974, which added section 244 to the National Housing Act. Except for 24 CFR part 250 dealing with State Housing Finance Agencies, it was not until 1983 that coinsurance became operational for HUD's multifamily programs. In May of that year HUD implemented the section 223(f) coinsurance program (24 CFR part 255) for the purchase or refinancing and limited repair of existing projects. In October 1984, HUD expanded coinsurance to the section 221(d) program (24 CFR part 251) for new construction and substantial rehabilitation of rental housing. In October 1988, HUD extended coinsurance to the section 232 program (24 CFR part 252) for new construction and substantial rehabilitation of nursing homes, intermediate care facilities and board an care homes. This program also allows loans for acquisition or refinancing of existing, fully insured facilities.

Coinsurance was intended to function as a joint venture between the private and public sectors, in which lenders and HUD would share mortgage insurance risk, thereby providing an alternative to traditional HUD full insurance financing. Multifamily coinsurance was intended to augment, rather than replace, HUD's full insurance programs as a means of encouraging the producion and preservation of moderate-income rental housing and residential health care facilities.

Comparison of Coinsurances and Full Insurance

In full insurance, virtually all risk is borne by the Federal Government. To date, all loan processing and underwriting has been done by HUD field offices. Under coinsurance, HUD delegates, to approved private-sector mortgage lenders, the authority to originate, process and underwrite mortgage loans and to insure firm commitments that bind HUD to coinsure those loans. HUD also delegates to coinsuring lenders responsibility for loan servicing and management oversight, as well as acquisitions, management and disposition of defaulted projects. Under coinsurance, the coinsuring lender assumes a portion of the risk for each loan it makes. In return for the lender's taking a share of the risk and assuming greater processing, underwriting, servicing and disposition responsibilities, HUD allows the lender to collect various application responsibilities, HUD allows the lender to collect various applications, financing and placement fees and to share with HUD the initial and annual Mortgage Insurance Premiums.

In full insurance, when a default occurs, the lender typically assigns the mortgage to HUD and receives insurance benefits. HUD is then responsible for foreclosing the defaulted mortgage, managing the project once it is acquired and, ultimately, disposing of it. In coinsurance, when a default occurs, the lender does not have the option of assigning the defaulted mortgage to HUD. Instead, the lender must itself foreclose the mortgage, and can file a claim only after it has sold the project—or after twelve months have elapsed following the date the project was acquired. After deducting the sales proceeds (or the higher of two appraised values, if the project was not sold), the lender must absorb a deductible amount equal to 5% of the outstanding mortgage balance. The remaining loss is then shared, 85% by HUD and 15% by the coinsuring lender.

Program Activity

Since 1983, more than 100 lenders have applied to participate in one or more of the multifamily coinsurance programs. However, only 39 lenders were fully approved to participate in one or more programs. Since 1983, over 1,500 projects with a total mortgage value of approximately $9.9 billion have been coinsured. The following table provides a cumulative breakout of coinsured loans closed by program.

COINSURED LOANS CLOSED AS OF DECEMBER 31, 1989

Program	Projects	Units	Mortgage amount
223(f)	1,273	304,665	$7,422,680,000
221(d)	250	48,445	2,418,205,500
232	5	N/A	29,126,300
Total	1,528	353,110	9,870,011,800

Program Losses

While HUD's coinsurance programs have provided financing for a significant number of multifamily projects and units, the programs have been plagued by an unacceptable level of loan defaults and losses to the FHA General Insurance Fund. The following table shows coinsured loan defaults and claims paid through the end of 1989.

COINSURED LOAN DEFAULTS AND CLAIMS THROUGH DECEMBER 31, 1989

Program	Defaults		Claims paid	
	Projects	Mortgage amount	Projects	Amount paid
223(f)	187	$1,059,400,200	26	$72,796,831
221(d)	19	240,702,400	0	0
232	0	0	0	0
Total	206	1,300,102,600	26	72,796,831

A recently completed audit by the General Accounting Office estimated that, on an accrual basis, the coinsurance programs sustained $960 million in losses for Fiscal Year 1988. These losses were attributable to poor underwriting by the coinsuring lenders, as well as weak monitoring and enforcement by HUD. The GAO audit indicated that additional losses are likely from defaults of mortgages originated before 1989.

Since September 1988, five coinsuring lenders with total coinsured portfolios of close to $2 billion have experienced severe financial difficulties and have defaulted on their obligations to holders of Mortgage Backed Securities (MSB) guaranteed by the Government National Mortgage Association (GNMA). The financial collapse of these coinsuring lenders resulted from a combination of imprudent lending and undercapitalization. GNMA has been obligated, under its Guaranty Agreements, to take over the portfolios of these defaulted lenders and to make the required payments to securities holders. GNMA is authorized by HUD to assign defaulted loans to FHA (HUD) for full indemnity. These lender defaults have, in effect, raised HUD's exposure on their coinsured loans from approximately 80 percent to 100 percent.

Efforts to Evaluate and Reform Coinsurance

Since taking office, Secretary Kemp has taken steps to reevaluate coinsurance and to reduce HUD's financial exposure. On May 5, 1989, he ordered a comprehensive evaluation of the program and placed a moratorium on new entrants into the program. During this evaluation period, HUD increased its monitoring of all coinsuring lenders and reviewed lenders' processing and underwriting for all coinsured loans. In addition to reviewing current commitments, HUD has evaluated the overall performance of all participating lenders to identify those who should be placed under close scrutiny or be made subject to administrative sanctions. As a result of this evaluation, seven lenders were suspended and six others have been placed on probation to date.

HUD also engaged the accounting firm of Price Waterhouse to review the coinsurance programs' capital and financial reporting requirements. Price Waterhouse found that ". . . given presently apparent loss levels, system-wide capital is considered insufficient and, in our view, must be raised, at least on an interim basis, if the programs are to be continued." Price Waterhouse recommended that HUD establish capital requirements at a level no less than that required by the Federal National Mortgage Association (FNMA) under its Delegated Underwriting and Servicing (DUS) program. Price Waterhouse also found that the coinsurance programs "currently suffer from a lack of reliable financial information." The accounting firm recommended that HUD institute a quarterly call reporting requirement (similar to that required by the federal financial regulatory agencies from banks and savings and loan associations), with financial information reported in accordance with a uniform chart of accounts.

Material Weakness Finding and Intention To Terminate the Program

As a consequence of audit reports by HUD's Office of Inspector General, the GAO audit, the Price Waterhouse study and HUD's internal control reviews pursuant to the Federal Managers' Financial Integrity Act of 1982, Secretary Kemp, in a December 29, 1989 report to the President, identified coinsurance as HUD's "top material weakness." The report cited, as specific program defects: weak program standards which enabled inexperienced and undercapitalized lenders to participate; weak underwriting standards; ineffective monitoring; and lack of enforcement.

In announcing publicly his intention to terminate the coinsurance program and to restructure the full insurance program, Secretary Kemp said on January 17, 1990: "The coinsurance method is structurally flawed and fundamentally unsound as well as administratively unfixable."

Efforts To Reform the Program and Continue Coinsurance Availability

Since May of 1989, HUD has analyzed the scope and degree of change in the coinsurance program that would be necessary to make the program actuarially sound, and has considered whether these reforms would be consistent with and in compliance with the program envisioned by section 244 of the National Housing Act. HUD has reviewed the types of reforms of the program that would be required to operate it in a manner consistent with the need to maintain the integrity and solvency of the FHA General Insurance Fund. This analysis has included examination and consideration of the minimum capital and leverage requirements recommended in the Price Waterhouse report.

HUD has also analyzed the changes required in its coinsurance insurance premiums, underwriting standards and monitoring and enforcement procedures necessary to satisfy the Secretary's fiduciary obligations to the Insurance Fund. This review has included analyses of the Federal National Mortgage Association's Delegated Underwriting System (DUS), and the regulatory regime required of financial institutions by the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the former Federal Home Loan Bank Board. This analysis has indicated that the program changes required would be so extensive and fundamental to the coinsurance program as to change its nature and structure. These changes would require such a level of supervision by HUD that they would undermine the essential deregulatory premises of the coinsurance program as it was originally contemplated. Indeed, the nature of this kind of adjustment in the program would so limit the amount of discretion and independence of the coinsuring lender as to blur existing distinctions between the coinsurance and full insurance programs.

Based on these considerations, bolstered by the Department's extensive discussions with and correspondence from coinsuring lenders who have indicated widespread opposition to the

contemplated new requirements, the Department has concluded that reform of the coinsurance program is not practicable. As the Secretary has stated, "[Coinsurance] cannot be managed or overseen in a way that will serve the interests of the public at large or the needs of families for affordable housing."

Accordingly, HUD is today announcing its proposed termination of the multifamily coinsurance programs. Since coinsurance is actually a delivery system for FHA insurance products, this action will not disturb the availability of FHA full insurance. Moreover, the Department intends to develop a new, modified FHA full insurance program that eliminates the objectionable features and effects of the existing coinsurance program.

Under the contemplated new program, HUD would delegate certain processing and servicing responsibilities to participating lenders, but would retain ultimate responsibility for loan commitments. The Department will make its best effort to design and implement this program in 1990. An Advance Notice of Proposed Rule Making (ANPRM) outlining major features of the delegated processing program and requesting public comment on particular issues to be addressed in rules implementing that program is being prepared for early publication.

Impact on the Availability of Mortgage Financing

While termination of the coinsurance programs would have a temporary impact on mortgage markets, it should be noted that there now exist a number of alternative conventional and credit-enhanced vehicles for multifamily mortgage financing which did not exist when coinsurance was first implemented. Additionally, HUD's full insurance programs continue to be available for all projects that were eligible for coinsured financing. Pending the effectiveness of a final rule in this proceeding, HUD will continue to permit coinsuring lenders complying with all capital and liquidity requirements to issue HUD-approved commitments and to close coinsured loans, conditioned upon a precommitment review by HUD. HUD will also continue closely to monitor lender underwriting practices and will take administrative action when underwriting improprieties are discovered.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. While the coinsurance program involves insured loan transactions involving mortgages with very large dollar amounts, the program has never been the exclusive source of FHA multifamily mortgage insurance. HUD's full insurance program has been, and will remain, available as an alternative means of securing the benefits of FHA mortgage insurance on eligible projects.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Experience under the coinsurance programs affected by this rule has not demonstrated any substantial impact on small entities.

This rule was not listed on the Department's most recent Semiannual Agenda of rules, published on October 20, 1989 (54 FR 44702, 44722) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket clerk at the above address.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 67(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule will not affect the basic availability of FHA insured multifamily mortgage financing assistance—merely the methods under which such financing can be secured. No programmatic or policy changes would result from this rule's promulgation which affect existing relationships between the federal government and state and local governments.

Executive Order 12606, The Family. The General Counsel, as Designated Official under Executive Order 12606, *The Family,* has determined that this Rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

The catalog of Federal Domestic Assistance program numbers are 14.129, 14.155, 14.173 and 14.176.

List of Subjects

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

24 CFR Part 252

Mortgage insurance, Coinsurance of nursing homes, intermediate care facilities, and board and care homes.

24 CFR Part 255

Mortgage insurance.

Accordingly, 24 CFR parts 251, 252, and 255 are proposed to be amended as follows:

1. 24 CFR part 251 would be revised to read, in its entirety, as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

Authority: Section 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 251.1 Termination of program.

Effective on [*insert effective date*], the authority to coinsure mortgages under this Part is terminated, except that the Department will honor legally binding and validly issued commitments issued before [*insert effective date*]. Part 251, as it existed immediately before [*insert effective date*], will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban Development with respect to loans coinsured under this part.

2. 24 CFR part 252 would be revised to read, in its entirety, as follows:

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

Authority: Sections 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 252.1 Termination of program.

Effective on [*insert effective date*], the authority to coinsure mortgages under this Part is terminated, except that the Department will honor legally binding and validly issued commitments issued before [*insert effective date*]. Part 252, as it existed immediately before [*insert effective date*], will continue to govern the rights and obligations of coinsured lenders, morgagors, and the Department of Housing nd Urban Development with respect to loans coinsured under this Part.

3. 24 CFR Part 255 would be revised to read, in its entirety, as follows:

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

Authority: Sections 211, 244, National Housing Act (12 U.S.C. 1715b 1715z(9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 255.1 Termination of program.

Effective on [*insert effective date*], the authority to coinsure mortgages under this Part is terminated, except that the Department will honor legally binding and validly issued commitments issued before [*insert effective date*]. Part 255, as it existed immediately before [*insert effective date*], will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban Development with respect to loans coinsured under this part.

Dated: March 5, 1990.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90–6903 Filed 3–26–90; 8:45 am]

BILLING CODE 4210–27–M

Federal Register

Tuesday
March 27, 1990

Part VI

Environmental Protection Agency

40 CFR Part 60

Review of Standards of Performance for New Stationary Sources; Phosphate Rock Plants; Review of Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3730-5]

Review of Standards of Performance for New Stationary Sources; Phosphate Rock Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: The EPA is required by the Clean Air Act to review standards of performance for new, modified, or reconstructed stationary sources every 4 years. The first review of the existing new source performance standards (NSPS) for phosphate rock plants (40 CFR part 60, subpart NN) has been completed to determine the need for revision of the existing standards. The EPA has concluded that no revision to the standards is appropriate at this time.

ADDRESSES: *Docket.* Docket No. A–88–13, containing supporting information gathered during the review, is available for public inspection and copying between 8 and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey A. Telander, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5427.

SUPPLEMENTARY INFORMATION:

I. Background

The NSPS for phosphate rock plants were proposed on September 21, 1979, and the final standards were promulgated on April 16, 1982. The purpose of the standards is to control particulate matter emissions from phosphate rock dryers, calciners, grinders, and ground rock handling and storage systems. The NSPS limit particulate matter emissions from dryers to 0.03 kilograms per megagram (kg/Mg) of phosphate rock feed [0.06 pounds per ton (lb/ton)]. Visible emissions from dryers are not to exceed 10 percent opacity. The NSPS limit particulate matter emissions from calciners to 0.12 kg/Mg of unbeneficiated or blend of beneficiated and unbeneficiated phosphate rock feed (0.23 lb/ton). The NSPS limit particulate matter emissions from calciners to 0.055 kg/Mg of beneficiated phosphate rock feed (0.11 lb/ton). Visible emissions from calciners are not to exceed 10 percent opacity. The NSPS limit particulate matter emissions from grinders to 0.006 kg/Mg of phosphate rock feed (0.012 lb/ton). Visible emissions from grinders and ground rock handling and storage systems are not to exceed zero percent opacity. The NSPS apply to all facilities which have a maximum plant production capacity greater than 3.6 megagrams per hour (Mg/hr) and commenced initial construction, modification or reconstruction after September 21, 1979. Those facilities producing or preparing rock solely for consumption in elemental phosphorus production are exempt from the phosphate rock plant NSPS.

The Clean Air Act Amendments of 1977 require that the Administrator of the EPA review, and, if appropriate, revise established NSPS every 4 years. This is the first review of the phosphate rock plants NSPS. The purpose of the review is to provide a basis for determining the need for revision of the standards. As part of the review, information was gathered from the following sources: reference literature, discussions with industry representatives, plant surveys, EPA Regional Offices, State and local agencies, trade organizations, process and air emissions control equipment vendors, and responses to information requests made under authority of Section 114 of the Clean Air Act from NSPS subject plants. From these sources the current status of the industry's processing techniques, air emissions control technologies, and compliance with the NSPS was determined. The cost and cost effectiveness of dry and wet grinding processes and alternative control systems were also determined. A summary of the review findings follows:

II. Findings

Industry Size and Production Trends

Since the NSPS for phosphate rock plants were proposed in 1979, the industry has suffered some low production years. Production rates dropped from 46.4 million metric tons of rock mined in 1977 to 37.4 million metric tons in 1982. The U.S. Bureau of Mines predicts an increase in production for 1989 and 1990. Based on indusry forecasts, 55 million metric tons of rock will be produced in 1990. Florida is currently responsible for 80 percent of all phosphate rock mined in the United States. As mines are depleted and closed, mine production in Florida is expected to decrease from 422 million metric tons in 1990 to 32, 23, 17, and 13 million metric tons by the years 1995, 2000, 2005, and 2010, respectively.

Technology Changes

When the NSPS were originally promulgated, phosphate rock was dried before being ground for introduction to phosphoric acid production, for use in granular triple superphosphate, or for export. The predominant method of drying was the use of dryers. However, when the organic content of the phosphate rock was sufficient to cause sliming in the acidulation step of phosphoric acid production, the rock was processed in calciners, which operate at higher temperatures than do dryers, to drive off the organics.

Since the NSPS were promulgated, the major change in the industry has been the adoption of wet grinding, rather than dry grinding, to prepare rock for introduction to phosphoric acid production processes. Although, dry grinding is still used for granular superphosphate production and for preparation of ground rock for export, wet grinding has become increasingly popular because of the economic benefit it offers operators. The capital cost of installing a wet grinding circuit is less than the capital cost of a dry grinding circuit because the dryer or calciner and the air pollution control devices associated with them, as well as the air pollution control devices associated with the dry grinding and the handling and storage of dry ground rock, are not required in a wet grinding system. A substantial savings in operating costs is also realized in the wet grinding circuit because of the reduced energy requirements when the dryer or calciner and air pollution control devices are eliminated.

Although wet rock grinding is a processing technique, it also accomplishes air pollution control. Wet grinding offers the environmental benefit of suppressing the air emissions associated with dryers, calciners, dry rock grinders and the handling and storage of dry ground rock. However, wet grinding does not eliminate the problem of sliming in phosphoric acid production when the phosphate rock contains high levels of organics. Since the NSPS were promulgated, improvements in defoaming chemicals used in phosphoric acid production have made it possible to control sliming without requiring calcining.

Control Technology

For those facilities that continue to produce dry ground rock for export shipment or for use in granular triple superphosphate production, no new air

pollution control technology has emerged since the NSPS were originally developed. When the NSPS were promulgated, it was acknowledged that no dryers were controlled with fabric filters. However, the EPA based the NSPS for dryers on fabric filter or high energy venturi scrubber control because of their effective performance on similar applications (kaolin rotary dryers and asphalt aggregate dryers). Subsequent to the promulgation of the NSPS, fabric filters have successfully been operated at phosphate rock plants for control of dryer air emissions. Dryer emissions can also be controlled with electrostatic precipitators (ESP's). Calciner emissions are controlled with scrubbers and electrostatic precipitators. Transfer points are often the source of fugitive emissions and are hooded for control with evacuation systems. The recovered product is usually returned to the process. Storage facilities for dry ground rock are vented to fabric filters or scrubbbers. When fabric filter control is used, the recovered product is returned to the storage facility.

Emission Levels Achieved at NSPS Subject Facilities

During this review six phosphate rock plants were identified as having affected facilities subject to the NSPS. Seven NSPS subject dryers were identified. Of these, only one now operates on a regular basis. No calciners were found to be subject to the NSPS. Five grinders were identified as having been installed since the September 21, 1979, applicability date. However, these grinders are all operated under wet conditions and do not emit air emissions. One ground rock handling and storage facility was identified, but its operation has been discontinued because the plant no longer dries ground phosphate rock.

Emissions test from these facilities indicate that all of the dryers were in compliance with NSPS limits for particulate matter. Emission rates ranged from 0.0075 to 0.029 kg/Mg of rock feed to the dryer (0.015 to 0.58 lb/ton of rock feed) as compared to the NSPS limit of 0.030 kg/Mg of rock feed (0.06 lb/ton of rock feed). Three of the dryers are controlled with fabric filters and four are controlled with wet scrubbers.

Cost Considerations

The costs of controlling air emissions from dry rock processing affected facilities were analyzed for each control device alternative, i.e., fabric filter or wet scrubber control. Since phosphate rock plants are concentrated in the southeast and western mountain states and electric rates vary by region, annual costs were calculated for both eastern and western plants. Fabric filter control of air emissions from each of the affected facilities was consistently more cost effective, in terms of dollars per megagram of particulate removed, than control with wet scrubbers. Using fabric filter control, the cost effectiveness figures ranged from $18.8/Mg for dryers to $134/Mg for grinders ($17.0/ton to $122/ton) in eastern plants and $17.1/Mg for dryers to $133/Mg for grinders ($15.5/ton to $120/ton) in western plants.

Because wet rock grinding is not only a process technique, but also a means of suppressing air emissions, the cost effectiveness of wet grinding in controlling emissions of particulate matter was compared to dry grinding. To do this it was necessary to compare the capital and annual costs of the process including the air pollution control system costs. The total capital investment for a typical dry rock grinding plant is $14.2 million as compared to $5.9 million for a typical wet rock grinding plant. Estimated annual costs for an eastern dry rock grinding plant were $7.11 million and $7.12 million for a western plant. for wet rock grinding plants, eastern facilities had annual costs of $3.40 million and western facilities had annual costs of $3.33 million. Hence, wet rock grinding not only reduces air emissions, but it is also a less costly process to operate.

III. Conclusions

The impact of this standard has become very limited due to the introduction of wet rock grinding which has eliminated the dryer or calciner and the air emissions associated with their operation as well as the air emissions associated with rock grinders and ground rock and handling and storage facilities operated under dry conditions. As the cost figures indicate, a dry rock grinding circuit is more costly to install and operate than a wet rock grinding process. Many existing facilities have found that the annual savings of wet grinding over dry grinding are sufficient to justify converting existing dry grinding circuits to wet grinding circuits. For those facilities that dry rock for export or for use in the production of granular triple superphosphate, there has been no change in the technology available to control air emissions. It is expected that these current control options will continue to be applied to dry process phosphate rock plants. The emissions data indicate that the control technology is adequate to reduce air emissions below the NSPS limits and that subject facilities have demonstrated compliance with the NSPS.

IV. Paperwork Reduction Act

This action does not change the paperwork requirements approved by OMB under control No. 2060–0111. The clearance expires on February 28, 1991.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Phosphate rock, Phosphate rock plants, Reporting and recordkeeping requirements.

Dated: March 20, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 90–6920 Filed 3–26–90; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
March 27, 1990

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252, and 255
Additional Review Requirements for HUD Coinsurance Programs; Interim Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

[Docket No. R-90-1474; FR-2785-I-01]

Additional Review Requirements for HUD Coinsurance Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim final rule.

SUMMARY: This document implements by rule making a system of pre-commitment review governing HUD's coinsurance programs under 24 CFR parts 251, 252 and 255. The purpose of this rule is to afford urgently needed additional protection for the General Fund against excessive defaults in the coinsurance programs.

DATES: Effective date: April 26, 1990, except for §§ 251.301(f), 252.301(f), and 255.301(f), that contain information collection requirements that are awaiting OMB approval.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

The Department, however, has requested a waiver of the otherwise applicable 30-day delayed effective date requirement of section 7(o) (3) of the Department of Housing and Urban Development Act. In the event that this waiver request is granted, the revised effective date will be announced in a separate notice published in the **Federal Register.**

COMMENT DUE DATE: April 26, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule (Notice) to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755–2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755–7084).

FOR FURTHER INFORMATION CONTACT: Matthew C. Andrea, Jr., Acting Director, Procedures and Evaluation Division, Office of Multifamily Coinsurance Progams, Room 6138, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–4956. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 251.301(f), 252.301(f), and 255.301(f) of this rule have been determined by the Department to contain collection of information requirements.

The information collection requirements contained in this rule have previously been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2502–0331 and 2502–0375.

The public reporting burden for each of these collections of information is estimated to include the time for reviewing and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading,

Other Matters

Send comments within 7 days regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Nature of this Rule Making

The substance of this rule imposing pre-commitment review in HUD's three coinsurance programs was already issued by HUD in Coinsuring Lender Letters 90–1 (dated January 16, 1990) and 90–2 (dated January 23, 1990) (the "Lender Letters"), without rule making. HUD believes that no rule making was legally required because the Coinsuring Lender Letters are exempt from the Administrative Procedure Act (APA) as "matter(s) relating to . . . benefits, or contracts," and exempt from both the APA and 24 CFR part 10 as procedural rules. However, on Friday, February 2, 1990, an action entitled *Housing Study Group, et al.* v. *Jack Kemp, Secretary of Housing and Urban Development, et al.,* Civil Action No. 89–244 (JHG), was commenced in the United States District Court for the District of Columbia. The plaintiffs, an association of mortgage bankers and two mortgage banking companies, contend among other things that the Lender Letters constituted substantive rules for which notice and comment rule making was required prior to implementation.

While on February 7, 1990, the Court denied a temporary restraining order (prior to having received any briefs from HUD), the Court expressed its tentative view that plaintiffs' rule making claim was probably sufficiently strong to satisfy the "likelihood of success on the merits" requirement for issuance of a preliminary injunction. The Court scheduled the preliminary injunction motion to be heard on March 7, 1990.

Without conceding that rule making is legally required, and in the interest of extreme caution, HUD is issuing this Interim Rule to minimize the severity of any financial losses that HUD might suffer if the court were to preliminarily enjoin the Lender Letters for lack of rule making.

Coinsurance Programs

Section 244, 12 U.S.C. 1715z–9, was added to the National Housing Act (NHA) in the Housing Community Development Act of 1974. Although Section 244 vests authority in the Secretary to insure "pursuant to a co-insurance contract" any mortgage, advance or loan under the various mortgage insurance programs authorized under Title II of the NHA, the Secretary of HUD did not exercise this discretionary authority to implement coinsurance programs in a major way until 1983. (In 1980 HUD had issued a rule at 24 CFR part 250 for Coinsurance for State Housing Finance Agencies," but the program has never been used).

In May 1983, HUD implemented the section 223(f) coinsurance program (24 CFR part 255) for the purchase of refinancing and limited repair of existing rental housing projects. In October 1984, HUD expanded coinsurance to the section 221(d) program (24 CFR part 251) for the construction or substantial rehabilitation of multifamily housing. In October 1988, HUD extended coinsurance to the section 232 program (24 CFR part 252) for new construction and substantial rehabilitation of nursing homes, intermediate care facilities, and board and care homes. This program also permits coinsurance of loans for the purchase of refinancing of existing fully insured facilities.

Coinsurance was intended to function as a joint venture between the private and public sectors in which private lenders and HUD would share the mortgage insurance risk. Multifamily coinsurance was intended to augment, rather than to replace, HUD's full insurance programs as a means of encouraging the production and preservation of moderate-income rental housing and residential health-care facilities. Under coinsurance, HUD authorizes approved lenders to originate, process and underwrite mortgage loans and to issue firm commitments that bind HUD to coinsure those loans. Participating lenders are supposed to assume a portion of the risk, in return for which HUD allows them to collect various application, financing and mortgage insurance fees and premiums. When default of a coinsured loan occurs, the lender must absorb a deductible amount equal to 5 percent of the outstanding mortgage balance; the remaining loss is shared 85 percent by HUD and 15 percent by the coinsuring lender.

Problems with Coinsurance

During the past two years, it has become increasingly clear that the coinsurance programs were not performing adequately. The HUD Inspector General had several times expressed criticisms of the programs. In an audit of the section 223(f) coinsurance program completed in December 1988, the Inspector General reported that coinsuring lenders were not complying adequately with HUD's underwriting and servicing requirements. More effective controls and enforcement efforts were needed, the Inspector General said, to enhance the Department's capacity to achieve corrective action by lenders.

Shortly after taking office, Secretary Jack Kemp initiated an examination of coinsurance designed to explore measures which would reduce HUD's financial exposure. On May 5, 1989, he ordered a comprehensive evaluation of the program and placed a moratorium on new entrants. During this evaluation period, HUD increased its monitoring of all coinsuring lenders and performed post-commitment reviews of the processing and underwriting of all coinsured loans.

HUD also engaged the firm of Price Waterhouse to review the coinsurance programs' capital and financial reporting requirements. Price Waterhouse found, both in its draft report of August 1989 and in its final report delivered in January 1990, that HUD's capital requirements were inadequate. Price Waterhouse recommended that, if the coinsurance programs were to be continued, HUD should raise lenders' capital and liquidity requirements at a minimum to the levels required by the Federal National Mortgage Association (FNMA) under its Delegated Underwriting and Servicing (DUS) program; substantially increase coinsuring lenders' financial reporting requirements; and strengthen all aspects of its monitoring of coinsuring lender.

In the early Fall of 1989, Charles A. Bowsher, the Comptroller General of the United States, appeared before the House Banking Committee's Subcommittee on Housing and Community Development to discuss the results of the financial audit of the Federal Housing Administration General Insurance Fund's 1988 Financial Statements. Notable in his remarks was his statement that, "[b]ecause of basic weaknesses in the multifamily coinsurance program, involving inadequate levels of capital and deficient coinsuring monitoring, it is possible that still more coinsurer defaults may occur and cause additional losses of unknown magnitude."

Acknowledging the critical importance of imposing adequate capital requirements to the success of any effort to reform the coinsurance program, the Secretary announced that the goal of achieving adequate capital requirements was the essential first step in the hoped-for reform of the program. During the latter part of 1989 and into January of this year, the Department reviewed the recommendations it had received, devised options for increasing capital requirements, and discussed these options with representatives of coinsuring lenders. The Department, however, met with strong industry objections to its proposals to increase capital and liquidity requirements for coinsuring lenders. In fact, despite repeated efforts by HUD to reach a consensus on this issue, representatives of the industry serving as members of a HUD task force whose mission was to establish adequate capital requirements announced at a meeting of that task force on December 13, 1989 that the Department's plan to implement enhanced capital and liquidity requirements was totally unacceptable. Should such requirements be imposed on the coinsurance program, these representatives stated, they would not participate. Thus, the essential first step toward reform was rendered impracticable.

The History of Defaults in Coinsurance

Since 1983, only 39 lenders have been approved for one or more of the coinsurance programs. Over 1,500 projects (containing over 350,000 units), with a total mortgage value (as of December 31, 1989) of approximately $9.9 billion have been coinsured. While the number of coinsured multifamily projects has been significant, the coinsurance programs have been plagued by an unacceptable number of defaults and by resulting severe losses to the FHA General Insurance Fund. Worse, these defaults have increased at an alarming rate in recent months. As of May 1, 1989, there were a total of 139 reported loan defaults under the section 223(f) coinsurance program (involving mortgage amounts totaling almost $808 million). On that same date, there were 13 reported defaults under the section 221(d) coinsurance program (totaling almost $106 million). Between May 1, 1989, and January 1, 1990, an additional 51 section 223(f) loans were reported to be in default, involving mortgage amounts totaling almost $270 million—an increase of 34 percent in a period of only eight months, representing a 300 percent increase in the annual rate of default experienced over the previous six years. Similarly, another ten section 221(d) loans with mortgage amounts totaling $202 million were reported to be in default during the eight-month period—an increase of more than 77 percent. The combined defaults since May 1989 have thus been almost half a billion dollars. (While the two-year-old section 232 program is too new to have had the same default experience, that program's regulatory structure is nearly identical to the older coinsurance authorities. Since final program Handbooks for the section 232 program have not yet been issued, all section 232 coinsured loans have been receiving pre-commitment reviews by HUD during the program's brief operational life. Accordingly, the absence of a high default rate in that program may be accounted for, under current conditions,

but the Department must anticipate that a mature section 232 program would encounter precisely the same problems as those experienced by its near-identical sister programs.)

On December 29, 1989, Secretary Kemp transmitted to the President HUD's A–123 Material Weakness Report in accordance with the Federal Managers' Financial Integrity Act of 1982. The Secretary noted that:

> The coinsurance program has been identified as HUD's top material weakness. * * * According to a GAO audit, the program sustained $960 million in losses for Fiscal Year 1988. These losses were attributable to poor underwriting by the coinsuring lenders as well as weak monitoring and enforcement by HUD. The GAO audit indicated that future losses are likely from defaults of mortgages originated before 1989.

The Structural Flaws of the Coinsurance Programs

It has become only too apparent, through HUD's review and reevaluation of coinsurance, that the programs are structurally unsound. As indicated above, under the coinsurance scheme HUD (1) delegates to approved lenders the authority (subject to audit, review and exception by HUD) to originate, process and underwrite mortgage loans and issue firm commitments that bind HUD to coinsure those loans; and (2) permits lenders to collect various application, financing, and mortgage insurance fees and premiums. In exchange for these privileges, participating lenders were to assume a portion of the risk—approximately 20 percent of the mortgage balance. The underlying theory of the program was that a coinsuring lender's financial stake in the success of a coinsured project would promote caution and responsibility in underwriting, because the lender would have a strong financial self-interest in avoiding having to absorb its share (*i.e.*, approximately 20 percent) of any loss.

In practice, however, FHA has frequently found itself bearing 100 percent of all losses, instead of the approximate 80/20 split envisioned in the program design. Almost all coinsured loans have in fact been packaged into mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMA), a federally owned corporation with HUD. If a coinsurer defaults on its obligations to GNMA, GNMA's remedy is to acquire the lender's portfolio, and FHA will eventually bear virtually the full amount of the loss, either through payment of full insurance benefits to GNMA, or through payment of coinsurance claims and supplemental indemnification to GNMA.

This GNMA aspect—when coupled with undercapitalized lenders with incentives to over-mortgage—constitutes a major structural flaw in the coinsurance programs; that is, what is shared risk in theory has not held true in practice. Shareholders in lender organizations have been able to uncouple risk from rate of return—making profits in the short run from high front-end fees. When losses occur, default is declared and these participants can walk away with their short-term profits—leaving FHA to bear the long-term losses.

The Decisions To Consider Terminating Coinsurance and To Commence Pre-commitment Reviews

In January 1990, Secretary Kemp confronted the dismal picture of the escalating defaults of coinsured loans; lender defaults and mounting HUD losses; the audit reports by the HUD Inspector General and the GAO; the Price Waterhouse study; and the rejection—by a substantial portion of the coinsuring lender community—of HUD's plan to impose increased capital requirments. The Secretary determined that it was prudent and necessary, as part of an overall restructuring of FHA's multifamily insurance programs, to propose the termination of the coinsurance programs. Toward that end, the Secretary announced on January 17 his intention to promulgate a proposed rule for that purpose. He also stated his intention to replace coinsurance with a modified full-insurance program. The Secretary explained that:

> The coinsurance method is structurally flawed and fundamentally unsound as well as administratively unfixable. * * * In comparing the losses resulting from coinsurance to the housing it provided, it is clear that coinsurance has been a bad deal for the American taxpayer. A careful and prolonged examination of all the available options and the potential consequences of each to the American public has led to the prudent management decision to end conisurance and rededicate the Department to an enhanced program of full insurance.

The Secretary, in a contemporaneous decision, ordered pre-commitment reviews of all ongoing coinsured lending activity. This action was regarded as essential to protect the General Insurance Fund against continued poor underwriting and the attendant risk of future losses.

On January 16 and January 23, 1990, the Assistant Secretary for Housing—Federal Housing Commissioner issued Coinsuring Lender Letters 90–1 and 90–2, respectively. These Letters impose a "pre-commitment review" procedure on all coinsurance applications for which a legally binding commitment is to be issued after January 16, 1990. The procedures described in these Letters comprise the substance of today's rulemaking.

Under the pre-commitment procedure, for each coinsurance application the lender is required, before commitment, to submit to HUD headquarters and to the appropriate HUD field office exhibits and information concerning the coinsurance application. (See Coinsuring Lender Letter 90–2.) The lender may not issue a commitment without written approval from the Commissioner.

Provision is made in this rule, for each of the three coinsurance programs, concerning extensions of commitments for projects that had outstanding legally binding commitments before the rule's effective date. (This rule does not purport to have retroactive effect. However, because the rule is a codification of the procedure set out in the Lender Letters, its practical effect will be to honor extensions of commitments *only* for projects with legally binding commitments before January 16, 1990.)

Any expired commitment that is reopened also will be subject to the pre-commitment review process.

HUD will consider a commitment to be "legally binding" if (i) it conforms to the format prescribed in the appropriate HUD Handbook and contains only those modifications that may have been approved by HUD in writing; (ii) all required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment; (iii) it conforms to HUD requirements pertaining to initial term and extension; (iv) it obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of the commitment; (v) it does not permit the lender, unilaterally, to change the conditions or terms of the commitment; and (vi) it is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

The standards HUD will apply in conducting pre-commitment reviews are the same as those to which participating coinsuring lenders must adhere in processing and underwriting coinsured loans. The standards are set forth in the HUD Handbooks applicable to the coinsurance programs—Handbook 4566.1 for the section 223(f) program,

Handbook 4561.1 for the section 221(d) program, and Handbook 4601.1 (which is in draft form but which has been distributed to all participating lenders) for the relatively new section 232 program. The standards are the same as those applied by HUD to mortgages receiving full insurance. Each coinsurance application will be reviewed by each underwriting discipline: architecture, cost, valuation and mortgage credit, to determine whether these standards have been met.

The imposition of pre-commitment reviews deals directly with the core problems of improper underwriting and over-mortgaging by providing HUD with an opportunity—*before* commitment—to examine each transaction and attempt to assure that program requirements are being met. The "commitment" stage of processing is, of course, the point at which HUD may become legally bound to proceed to the next stage of processing in carrying out its mortgage insurance responsibility. Thus, "commitment" is the pivotal point in the entire series of events from application for insurance to endorsement.

Given the history of the coinsurance program and HUD's announced intention to seek its termination, pre-commitment review—examination of what the coinsuring lender has done *before* the Federal Treasury is bound to pay for it—is essential to protect the FHA Insurance Fund from undercapitalized lenders. These lenders might otherwise be tempted to originate unsound loans to maximize fee income—anticipating that the program will soon end.

Because of the way the coinsurance program is currently structured, lenders make most of their income on coinsured loans "up front" (i.e., when the loan is closed). Since fees are expressed as a percentage of the mortgage amount, higher mortgates yield higher fees. Absent revised capital requirements that would have forced lenders to retain a larger share of this fee income as paid-in capital or loan loss reserves, lenders are able to distribute to themselves large portions of their fee income as "profit." This structural flaw, coupled with the anticipated termination of the program, creates an inducement for lenders to over-mortgage properties and create loans without adequate regard for their long-term viability, thereby compounding the federal government's potential losses.

While, in ordinary circumstances, post-commitment reviews might help in deterring coinsuring lenders from unsound underwriting practices, they are inherently more limited in their ability effectively to control unsound underwriting than are the pre-commitment reviews this rule would establish, because they do not occur until *after* the commitment has already been made. Moreover, with the entire program currently under consideration for termination, coinsuring lenders have even less incentive properly to underwrite. The threat of probation or suspension no longer seems a serious penalty. Pre-commitment review is necessary to, and will, intercept a higher proportion of improperly underwritten or over-mortgaged cases—thereby limiting the future defaults that otherwise may be expected to occur. Especially in this environment, post-commitment reviews could not give HUD adequate protection and pre-commitment reviews are imperative.

Other Matters

The Department finds that it is in the public interest to publish this rule for effect as an interim rule. Public comment on the rule is urged and invited. However, the public comment period has been reduced to 30 days because the Department wants to act quickly to make adjustments in the final rule, if necessary, to ensure that the pre-commitment review process functions smoothly and appropriately. In the event that HUD's proposed rule terminating the coinsurance programs under Parts 251, 252 and 255 is not adopted, or is not adopted promptly following the close of its public comment period, a final rule in this proceeding would be promulgated.

This interim rule is critically needed to provide HUD immediate additional protection against further losses. While a moratorium has been placed on new entrants to the coinsurance programs, loans are still being originated and coinsured by already-approved coinsuring lenders. It is particularly important to implement this rule on an emergency basis in light of the losses already suffered by the General Insurance Fund—including $960 million in losses attributable to coinsurance, as estimated by the General Accounting Office. If the implementation of these new requirements were delayed, the Department would continue to take additional and unnecessary risks on loans being originated and coinsured—particularly, as already noted, in light of the possibly imminent action to terminate the programs, and the anticipated adverse effects that anticipated action may be expected to have on lender underwriting standards. If this rule were not issued for effect on an interim basis, it would predictably require at least an additional three months for the rule to complete its public comment period, be republished as a final rule, and become effective. That additional delay could cause HUD the needless loss of millions of dollars, which it is the very purpose of this rule to prevent. The Secretary's fiduciary responsibilities for the Fund compel the changes set forth in this rule to be made effective on an emergency basis.

The only alternatives to implementation of the pre-commitment review process by means of interim rule making would have been to impose an emergency suspension on the issuance of new commitments, or to continue to bear the risk of huge losses pending the possibility of program termination following notice and comment rule making. The Department has rejected the alternative of outright suspension of the program because of the adverse impact suspension would have on existing approved coinsuring lenders, and on project owners and developers who have applied for coinsured loans. On the other hand, doing nothing to protect the Insurance Fund clearly is also an unacceptable alternative. The Department believes that it needs pre-commitment review for all coinsured loans to protect its interests, and that this measure of protection is not only essential, but involves the most minimal intrusion on the normal procedures for operating the coinsurance program that would be effective to protect the Government's and the taxpayers' interests.

This rule does not constitute a "major rule" as the term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. While this rule will result in an estimated 45-day maximum additional processing period before a lender can secure the endorsement of a coinsured mortgages, delays of this magnitude will not have so great an economic effect on lenders as to be significant within the meaning of Executive Order 12291.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rules does not have a significant economic impact on a substantial

number of small entities. Experience under both the full insurance and coinsurance programs related to this rule has not demonstrated any substantial impact on small entities.

This rule was not listed in the Department's Semiannual Agenda published on October 30, 1989 (54 FR 44702, 44722) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket clerk at the above address.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 67(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule is limited to imposing additional review requirements on coinsuring lenders. No programmatic or policy changes result from its promulgation which affect existing relationships between the Federal government and State and local governments.

Executive Order 12606, The Family. The General Counsel, as Designated Official under Executive Order 12606, *the Family*, has determined that this Rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies or programs relate to family concerns, will result from promulgation of this rule.

The collection of information requirements contained in this rule have been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act of 1980. Sections 251.301(f), 252.301(f) and 255.301(f) of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description of the Need for Information and its Proposed Use

This information collection will enable HUD to monitor on an ongoing basis the compliance of coinsuring lenders with the requirements of the program. The information will enable HUD to make sure prudent underwriting practices are adhered to by the coinsuring lenders during the restructuring of multifamily insurance and will assist the Department in protecting the FHA fund from future losses. All of the documents included in this information collection have already been cleared under OMB Clearance Numbers 2502–0331 and 2502–0375. This information collection will require minimal increase in burden hours since this information is already collected and maintained by the coinsuring lender.

Form Numbers:

1. A copy of the firm commitment, including any financing commitment if separate from the firm commitment. The suggested format of the firm commitment provides language that must be included in the firm commitment. The lender is free to reproduce the format on company letterhead and may add language as long as that language does not conflict with HUD requirements and guidelines.

2. All processing forms to include those forms and formats listed below plus any additional forms, formats and analyses used by the lender that are pertinent to the underwriting process.

3. Form HUD 2530 Clearance—Previous Participation Clearance.

4. Copies of appraisals (including formal narrative appraisal, if available) and income and expense analysis:

a. Form HUD 92264, Rental Housing—Project Income Analysis and Appraisal.

b. Form HUD 92264A, Supplement to Project Income and Appraisal.

c. Form HUD-92274, Operating Expense Analysis Worksheet.

5. Market analysis, reports and information—Form HUD 92273, Estimate of Market Rents by Comparison.

6. Financial statements and analyses—Form HUD 92410, Statement of Profit and Loss and Balance Sheet for Section 223(f) projects.

7. Credit reports and bank and trade references—Form HUD 92417, Personal Financial and Credit Statement.

8. Copies of verification of debt.

9. Engineering and cost studies:

a. Form FHA 2325, Cost Estimate/Feasibility Stage

b. Form FHA 2326, Project Cost Estimate

c. Form FHA 2326A, Cost Estimate Worksheet

10. Analyses of construction and rehabilitation requirements. There is no suggested format. The lender's analyses will depend on issues unique to the proposed project.

11. Plans and specifications—including AIA201 and Form FHA 2554, Supplemental General Conditions.

12. Verification of rent roll (Section 223(f) only. A rent roll certified by the mortgagor must disclose the information shown in the Format Rent Roll. The lender may require additional information about occupancy and other rent related issues. At a minimum, however, the information shown on the Format Rent Roll must be submitted by the mortgagor to the lender.

13. Certificate of Need/Alternate Study, if required (Section 232 only); Form HUD 02567HF, Certificate of Need for Nursing Home Assurance of Enforcement of State Standards.

14. Report and recommendation from the Residential Care Coordinator on the proposed project (Section 232 only).

15. Analysis of proposed residential care operations and management (Section 232 only)—There is no suggested format. The size and content of the analysis will vary, depending on project issues.

16. A narrative summary evaluating the various underwiting aspects of the project, prepared and signed by the Chief Underwriter. There is no suggested format. The size and content of the summary will vary, depending on the project issues.

Respondents: Lenders that have received approval to participate in the Section 223(f), Section 221 (d), and Section 232 coinsurance programs.

Frequency of Submission: Each time the lender wants to issue a loan commitment. Frequency varies according to loan volume.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Reporting burden	35		4		2		280
Status: New	• • •		• • •		• • •		• • •

The catalog of Federal Domestic Assistance program numbers are 14.129, 14.155, 14.173 and 14.176.

List of Subjects

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

24 CFR Part 252

Mortgage insurance, Coinsurance of nursing homes, intermediate care facilities, and board and care homes.

24 CFR Part 255

Mortgage insurance.

Accordingly, 24 CFR parts 251, 252, and 255 are amended to read as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 251 is revised to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z–9; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 251.301 is amended by revising paragraph (a) and by adding a new paragraph (f), to read as follows:

§ 251.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closing, except those functions specified in paragaph (b), (d) and (e) of this section. With respect to the issuance of commitments, the lender shall meet the requirements of paragraph (f) of this section.

* * * * *

(f) The precommitment review procedure set forth in this paragraph applies to any application for coinsurance under this part for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation.

(1) For each coinsurance application for which a legally binding commitment will be issued after April 26, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(2) Extensions of commitments for projects which had outstanding legally binding commitments as of April 26, 1990 are limited as follows:

(i) Firm commitments for insurance of advances may be granted two 60-day extensions;

(ii) Conditional commitments may be granted one 60-day extension;

(iii) Firm commitments for insurance upon completion may not be extended. However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in this paragraph.

(3) Reopened expired commitments are subject to precommitment review under this paragraph (f).

(4) HUD considers a commitment to be "legally binding" if:

(i) it conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(ii) all required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(iii) it conforms to HUD requirements pertaining to initial term and extension;

(iv) it obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(v) it does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(vi) it is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

3. Section 251.302(b) is revised to read as follows:

§ 251.302 Processing and commitment.

* * * * *

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from HUD of—

(1) The acceptability of the project in the areas of responsibility retained by the Commissioner under section 251.301(b);

(2) a waiver, where needed, of the approved high-cost factor under section 251.203(a);

(3) completion of any case review requirements of the Commissioner that are part of its lender approval process; and

(4) compliance with the requirements of § 251.301(f).

* * * * *

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

4. The authority citation for 24 CFR part 252 is revised to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z–9; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. Section 252.301 is amended by revising paragraph (a) and by adding a new paragraph (f), to read as follows:

§ 252.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closing, except those functions specified in paragraph (b), (d) and (e) of this section. With respect to the issuance of commitments, the lender shall meet the requirements of paragraph (f) of this section.

* * * * *

(f) The precommitment review procedure set forth in this paragraph applies to any application for mortgage coinsurance under this part for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation.

(1) For each coinsurance application for which a legally binding commitment will be issued after April 26, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written

approval from the Commissioner. Field Offices shall not endorse any case covered by the precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(2) Extensions of commitments for projects which had outstanding legally binding commitments as of April 26, 1990 are limited as follows:

(i) conditional commitments for new construction or substantial rehabilitation may be granted one 60-day extension;

(ii) Firm commitments for insurance of advances for new construction or substantial rehabilitation may be granted two 60-day extensions;

(iii) Firm commitments for insurance upon completion may not be extended;

(iv) For existing projects, only one 90-day extension may be granted for a conditional commitment and only one 60-day extension may be granted for a firm commitment. However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in this paragraph.

(3) Reopened expired commitments are subject to precommitment review under this paragraph (f).

(4) HUD considers a commitment to be "legally binding" if:

(i) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(ii) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(iii) It conforms to HUD requirements pertaining to initial term and extension;

(iv) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(v) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(vi) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

6. Section 252.302(b) is revised to read as follows:

§ 252.302 Processing and commitment.

* * * * *

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from HUD of—

(1) The acceptability of the project in the areas of responsibility retained by the Commissioner under § 252.301(b);

(2) A waiver, where needed, of the approved high-cost factor under § 252.203(a);

(3) Completion of any case review requirements of the Commissioner that are part of its lender approval process; and

(4) Compliance with the requirements of § 252.301(f).

* * * * *

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

7. The authority citation for 24 CFR part 255 is revised to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z–9; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 255.301 is amended by revising paragraph (a) and by adding a new paragraph (f), to read as follows:

§ 255.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closing, except those functions specified in paragraphs (b), (d) and (e) of this section. With respect to the issuance of commitments, the lender shall meet the requirements of paragraph (f) of this section.

* * * * *

(f) The precommitment review procedure set forth in this paragraph applies to any application for mortgage coinsurance under this part for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation.

(1) For each coinsurance application for which a legally binding commitment will be issued after April 26, 1990, the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(2) Extensions of commitments for projects which had outstanding legally binding commitments as of April 26, 1990 are limited as follows:

(i) Conditional commitments may be extended not to exceed 180 days from the date of original issuance;

(ii) Firm commitments may be granted two 60-day extensions. However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in this paragraph.

(3) Reopened expired commitments are subject to precommitment review under this paragraph (f).

(4) HUD considers a commitment to be "legally binding" if:

(i) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(ii) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(iii) It conforms to HUD requirements pertaining to initial term and extension;

(iv) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(v) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(vi) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

9. Section 255.302(b) is revised to read as follows:

§ 255.302 Processing and commitment.

* * * * *

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after

receipt of written evidence from HUD of—

(1) The acceptability of the project in the areas of responsibility retained by the Commissioner under § 255.301(b);

(2) A waiver, where needed, of the approved high-cost factor under § 255.203(a);

(3) Completion of any case review requirements of the Commissioner that are part of its lender approval process; and

(4) Compliance with the requirements of § 255.301(f).

* * * * *

Dated: March 2, 1990.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90–6904 Filed 3–26–90; 8:45 am]

BILLING CODE 4210–27–M

federal register

Tuesday
March 27, 1990

Part VIII

The President

Executive Order 12708—Amendments to the Manual for Courts-Martial, United States, 1984

Federal Register

Federal Register
Vol. 55, No. 59
Tuesday, March 27, 1990

Presidential Documents

Title 3—

The President

Executive Order 12708 of March 23, 1990

Amendments to the Manual for Courts-Martial, United States, 1984

By the authority vested in me as President by the Constitution of the United States and by chapter 47 of title 10 of the United States Code (Uniform Code of Military Justice), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484, Executive Order No. 12550 and Executive Order No. 12586, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 302(b)(2) is amended to read as follows:

"(2) *Commissioned, warrant, petty, and noncommissioned officers.* All commissioned, warrant, petty, and noncommissioned officers on active duty or inactive-duty training."

b. R.C.M. 905(e) is amended to read as follows:

"(e) *Effect of failure to raise defenses or objections.* Failure by a party to raise defenses or objections or to make motions or requests which must be made before pleas are entered under subsection (b) of this rule shall constitute waiver. The military judge for good cause shown may grant relief from the waiver. Other motions, requests, defenses, or objections, except lack of jurisdiction or failure of a charge to allege an offense, must be raised before the court-martial is adjourned for that case and, unless otherwise provided in this Manual, failure to do so shall constitute waiver."

c. R.C.M. 913(a) is amended by inserting the following at the end thereof:

"If mixed pleas have been entered, the military judge should ordinarily defer informing the members of the offenses to which the accused pleaded guilty until after the findings on the remaining contested offenses have been entered."

d. R.C.M. 1003(b)(2) is amended by inserting in the third sentence "or, in the case of reserve component personnel on inactive-duty, compensation for periods of inactive-duty training," after "basic pay".

e. R.C.M. 1103(b)(2)(B)(i) is amended to read as follows:

"(i) Any part of the sentence adjudged exceeds six months confinement or other punishments which may be adjudged by a special court-martial; or".

f. R.C.M. 1103(e) is amended to read as follows:

"(e) *Acquittal; courts-martial resulting in findings of not guilty only by reason of lack of mental responsibility; termination prior to findings.* Notwithstanding subsections (b), (c), and (d) of this rule, if proceedings resulted in an acquittal of all charges and specifications or in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, or if the proceedings were terminated by withdrawal, mistrial, or dismissal before findings, the record may consist of the original charge sheet, a copy of the convening order and amending orders (if any), and sufficient information to establish jurisdiction over the accused and the offenses (if not shown on the

charge sheet). The convening authority or higher authority may prescribe additional requirements."

g. R.C.M. 1106(e) is amended to read as follows:

"(e) *No findings of guilty; findings of not guilty only by reason of lack of mental responsibility.* If the proceedings resulted in an acquittal or in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, or if, after the trial began, the proceedings were terminated without findings and no further action is contemplated, a recommendation under this rule is not required."

h. R.C.M. 1106(f) is amended—

(1) by inserting "and accused" after "defense counsel" in the title thereto; and

(2) in subparagraph (1) to read as follows:

"(1) *Service of recommendation on defense counsel and accused.* Before forwarding the recommendation and the record of trial to the convening authority for action under R.C.M. 1107, the staff judge advocate or legal officer shall cause a copy of the recommendation to be served on counsel for the accused. A separate copy will be served on the accused. If it is impracticable to serve the recommendation on the accused for reasons including but not limited to the transfer of the accused to a distant place, the unauthorized absence of the accused, or military exigency, or if the accused so requests on the record at the court-martial or in writing, the accused's copy shall be forwarded to the accused's defense counsel. A statement shall be attached to the record explaining why the accused was not served personally."

i. R.C.M. 1107(b)(4) is amended to read as follows:

"(4) *When proceedings resulted in finding of not guilty or not guilty only by reason of lack of mental responsibility, or there was a ruling amounting to a finding of not guilty.* The convening authority shall not take action approving or disapproving a finding of not guilty, a finding of not guilty only by reason of lack of mental responsibility, or a ruling amounting to a finding of not guilty."

j. R.C.M. 1108(b) is amended—

(1) by striking out "officer exercising general court-martial jurisdiction over the command to which the accused is assigned" and inserting in lieu thereof "commanding officer"; and

(2) by inserting the following new sentence at the end thereof:

"The 'unexecuted part of any sentence' includes that part which has been approved and ordered executed but which has not actually been carried out."

k. R.C.M. 1112(b) is amended to read as follows:

"(b) *Exception.* If the accused was found not guilty or not guilty only by reason of lack of mental responsibility of all offenses or if the convening authority disapproved all findings of guilty, no review under this rule is required."

l. R.C.M. 1114(c)(2) is amended to read as follows:

"(2) *Dates.* A promulgating order shall bear the date of the initial action, if any, of the convening authority. An order promulgating an acquittal, a court-martial terminated before findings, a court-martial resulting in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, or action on the findings or sentence taken after the initial action of the convening authority shall bear the date of its publication. A promulgating order shall state the date the sentence was adjudged, the date on which the acquittal was announced, or the date on which the proceedings were otherwise terminated."

m. R.C.M. 1201(b)(3)(C) is amended to read as follows:

"(C) *Time limits on applications.* Any application for review by the Judge Advocate General under Article 69 must be made on or before the last day of the two year period beginning on the date the sentence is approved by the convening authority or the date the findings are announced for cases which do not proceed to sentencing, unless the accused establishes good cause for failure to file within that time."

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 304(b)(1) is amended to read as follows:

"Where the statement is involuntary only in terms of noncompliance with the requirements of Mil. R. Evid. 305(c) or 305(f), or the requirements concerning counsel under Mil. R. Evid. 305(d), 305(e), or 305(g), this rule does not prohibit use of the statement to impeach by contradiction the in-court testimony of the accused or the use of such statement in a later prosecution against the accused for perjury, false swearing, or the making of a false official statement."

b. Mil. R. Evid. 506(c) is amended to read as follows:

"(c) *Who may claim the privilege.* The privilege may be claimed by the head of the executive or military department or government agency concerned. The privilege for records and information of the Inspectors General may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, the Inspector General, or any other superior authority. A person who may claim the privilege may authorize a witness or the trial counsel to claim the privilege on his or her behalf. The authority of a witness or the trial counsel to do so is presumed in the absence of evidence to the contrary."

Sec. 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 10 is amended—

(1) in subparagraph b(4)(c) by adding the following new Note at the end thereof:

"[Note: If the absence was with intent to abandon the accused's guard, watch, or duty section, add the following element]"; and

(2) in paragraph f(4) by enclosing "with intent to abandon the same" in parentheses.

b. The title and content of paragraph 101 is deleted, and the word "RESERVED" substituted therefor.

c. Paragraph 105 is amended in subparagraph d to read as follows:

"Lesser included offenses. Article 80—attempts."

Sec. 4. Part V of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 5 is amended in subparagraph c(8) by—

(1) striking out the second sentence; and

(2) inserting the following new sentence in lieu thereof:

" 'Pay,' as used with respect to forfeiture of pay under Article 15, refers to the basic pay of the person or, in the case of reserve component personnel on inactive-duty, compensation for periods of inactive-duty training, plus any sea or foreign duty pay."

b. Paragraph 6a is amended by—

(1) redesignating subpargraph (4) as subparagraph (5);

(2) inserting the following new subparagraph after subparagraph (3) thereof:

"(4) Unless otherwise stated, an action suspending a punishment includes a condition that the servicemember not violate any punitive article of the code. The nonjudicial punishment authority may specify in writing additional conditions of the suspension."; and

(3) amending redesignated subparagraph (5) to read as follows:

"(5) A suspension may be vacated by any nonjudicial punishment authority or commander competent to impose upon the servicemember concerned punishment of the kind and amount involved in the vacation of suspension. Vacation of suspension may be based only on a violation of the conditions of suspension which occurs within the period of suspension. Before a suspension may be vacated, the servicemember ordinarily shall be notified and given an opportunity to respond. Although a hearing is not required to vacate a suspension, if the punishment is of the kind set forth in Article 15(e)(1)–(7), the servicemember should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate suspension of the punishment to present any matters in defense, extenuation, or mitigation of the violation on which the vacation action is to be based. Vacation of a suspended nonjudicial punishment is not itself nonjudicial punishment, and additional action to impose nonjudicial punishment for a violation of a punitive article of the code upon which the vacation action is based is not precluded thereby."

Sec. 5. These amendments shall take effect on April 1, 1990, subject to the following:

a. The amendment made to paragraph 10 of Part IV, shall apply to any offense committed on or after April 1, 1990.

b. The amendments made to Rule for Courts-Martial 905 and to Military Rule of Evidence 304 shall apply only in cases in which arraignment has been completed on or after April 1, 1990.

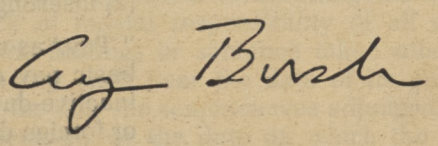
c. The amendment made to Rule for Courts-Martial 1106 shall apply only in cases in which the sentence is adjudged on or after April 1, 1990.

d. Nothing contained in these amendments shall be construed to make punishable any act done or omitted prior to April 1, 1990, which was not punishable when done or omitted.

e. The maximum punishment for an offense committed prior to April 1, 1990, shall not exceed the applicable maximum in effect at the time of the commission of such offense.

f. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to April 1, 1990, and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 6. The Secretary of Defense, on behalf of the President, shall transmit a copy of this Order to the Congress of the United States in accord with Section 836 of title 10 of the United States Code.



THE WHITE HOUSE,
March 23, 1990.

[FR DOC. 90–7153
Filed 3–23–90; 4:54 pm]
Billing code 3195–01–M

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Vol. 55, No. 59

Tuesday, March 27, 1990

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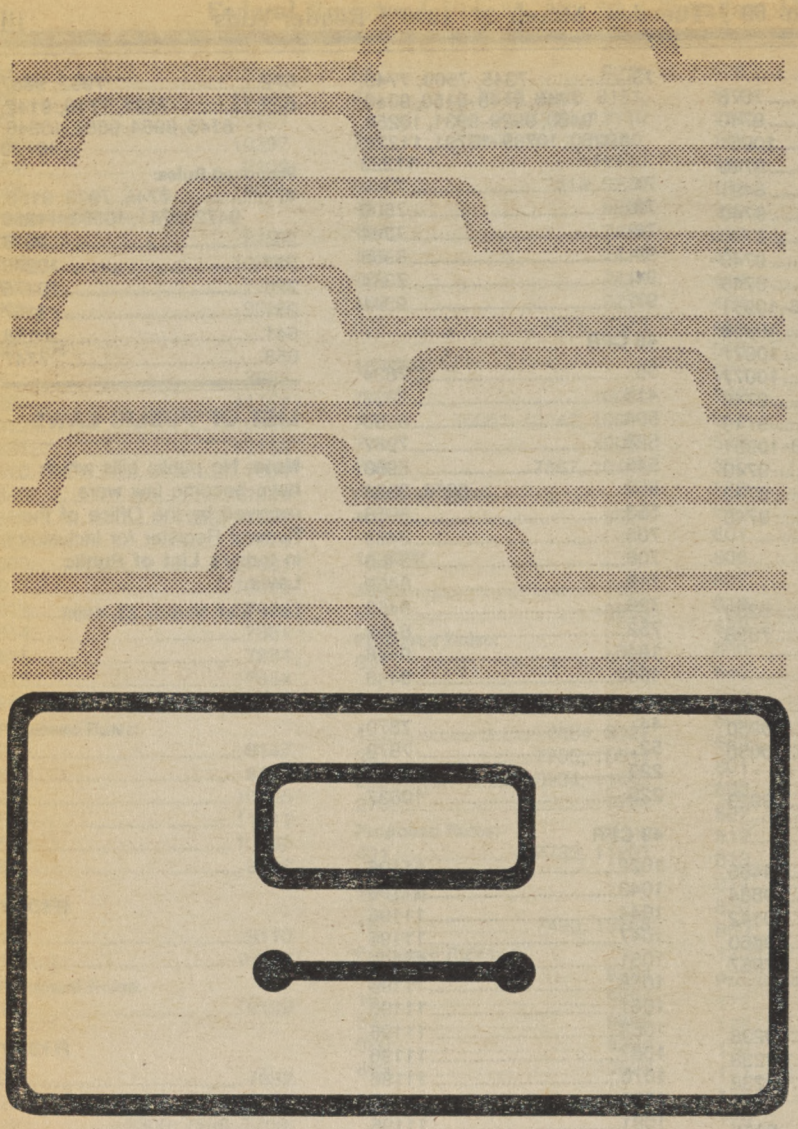
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in the Code of Federal Regulations (CFR)

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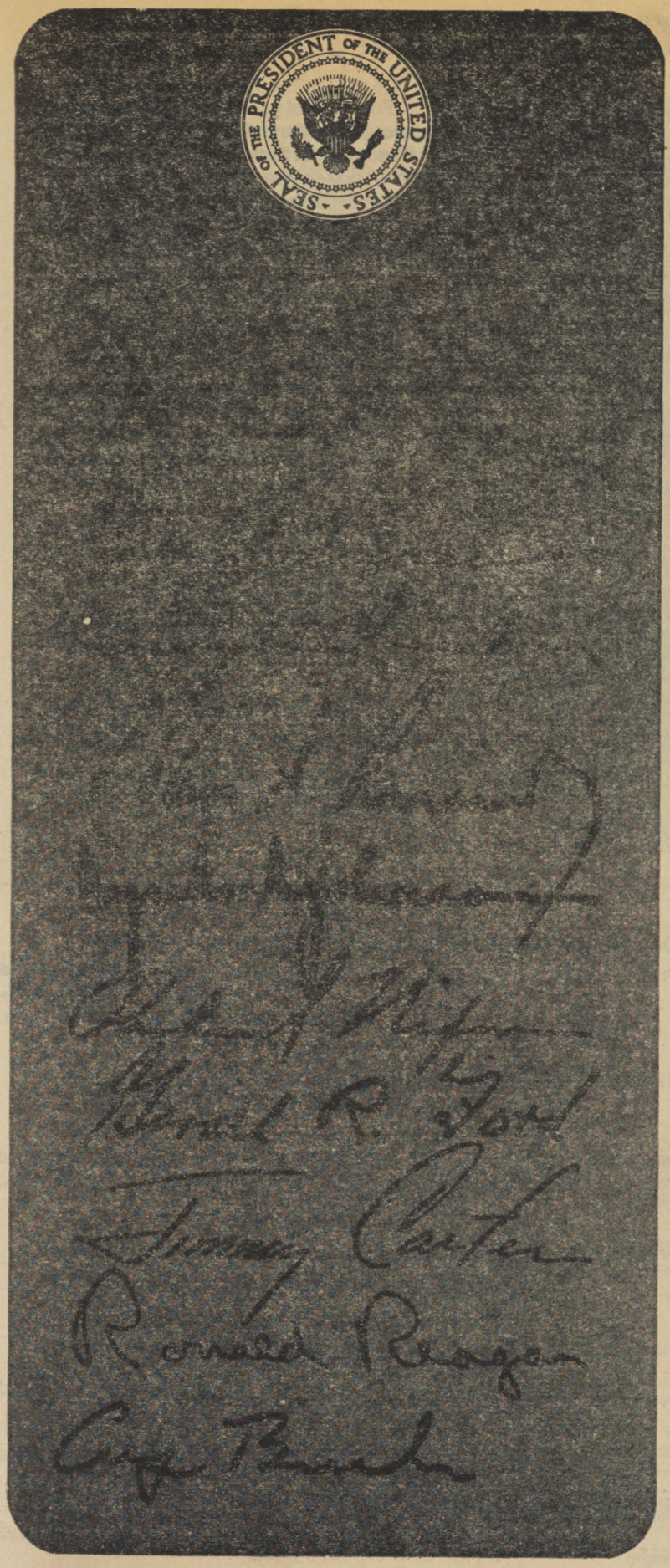
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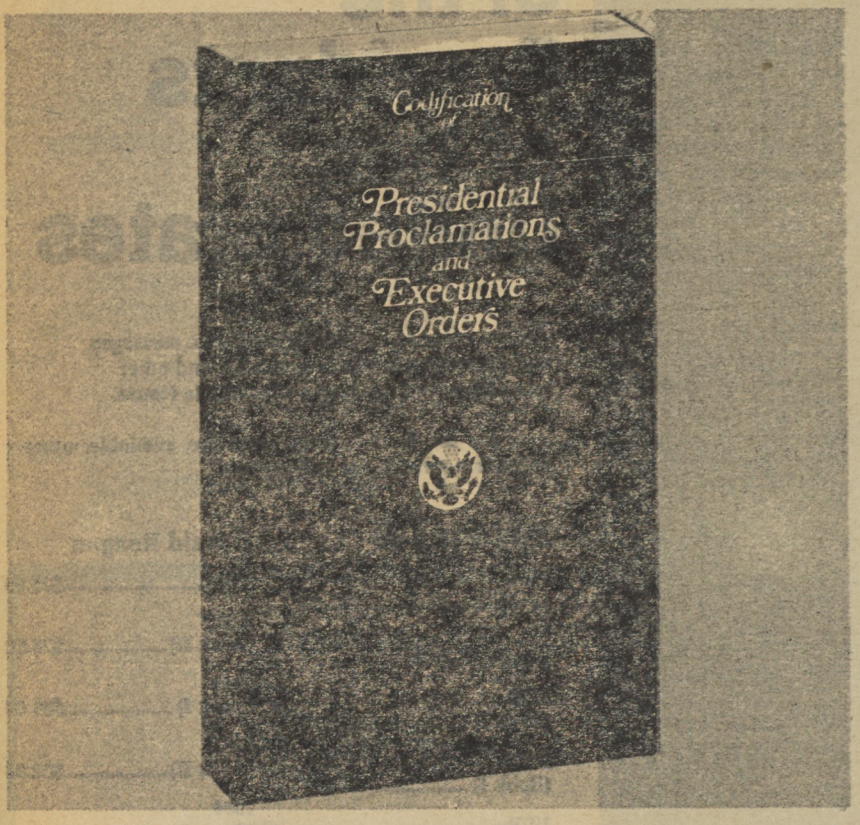
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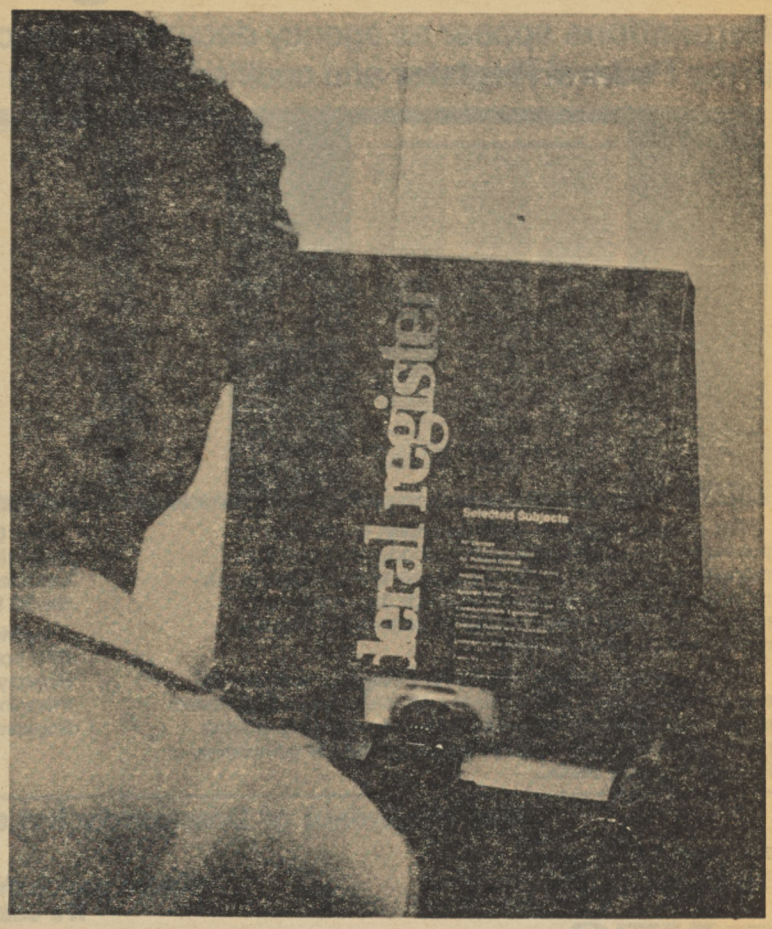
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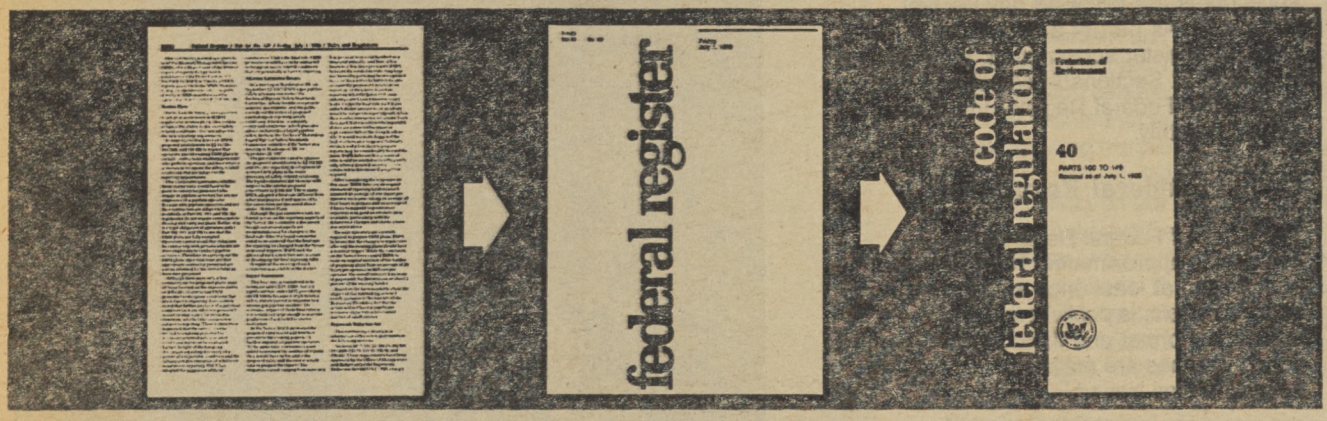
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