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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

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

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2637

RIN 3209-AA03

Post Employment Conflict of Interest: Supplemental 1990 Designation of Certain Executive Branch Senior Employee Positions and Separate Agencies

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final supplemental designation regulation under the Ethics in Government Act of 1978, as amended, to update and correct the most recent annual "Senior Employee" and separate agency designations published at 55 FR 4308–4348 (February 7, 1990). This supplemental regulation primarily reflects certain executive branch positions subject to the "Senior Employee" post-employment restrictions of 18 U.S.C. 207 in newly-created separate, or merged agencies in the executive branch.

18 U.S.C. 207(c) prohibits, for one year after leaving Government service, a former high-level "Senior Employee" from representing anyone in an attempt to influence his or her former agency on a matter pending before, or of substantial interest to, such agency. Annually, under 18 U.S.C. 207(d)(1)(C), the Director of the Office of Government Ethics must review executive branch agencies' position designations subject to the post employment conflict of interest regulations applicable to "Senior Employees," and make any such additions and deletions as are necessary. Additionally, 18 U.S.C. 207(e) gives the OGE Director discretionary authority to make determinations as to separate agencies and bureaus within a department or agency which are distinct and separate from the remaining functions of the department or agency for the purpose of limiting the application of the post employment rules.

EFFECTIVE DATE: June 19, 1990.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917.

FOR FURTHER INFORMATION CONTACT: Thomas Zorn or Barbara Mullen-Roth at telephone (202/FTS) 523–5757; FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION: Subsection 207(d)(1)(C) of title 18 U.S.C., contained in title V of the Ethics in Government Act of 1978, as amended ("the Act"), (Pub. L. 95–521), gives the Director of the Office of Government Ethics (OGE) authority to designate (1) certain executive branch employee positions for purposes of the restrictions of 18 U.S.C. subsections 207(b)(ii) and 207(c), and (2) executive branch agencies and bureaus, within a parent department or agency, having separate and distinct subject matter jurisdiction; i.e., "separate non-statutory agencies/bureaus." This rulemaking does not reflect the future verious of 18 U.S.C. 207 contained in title I of the recently-enacted Ethics Reform Act of 1989 (Pub. L. 101–194, November 30, 1989), as amended by Public Law 101–280 (May 4, 1990), which will become effective January 1, 1991.

This supplemental regulation amends the previously published lists (February 1, 1980 (45 FR 7402); February 8, 1980 (45 FR 8544); November 14, 1980 (45 FR 75500); March 5, 1982 (47 FR 9694); February 25, 1983 (48 FR 8188); March 15, 1984 (49 FR 9808); July 31, 1985 (50 FR 31096); July 16, 1986 (51 FR 25645); November 12, 1987 (52 FR 43442); December 2, 1988 (53 FR 48756); and February 7, 1990 (55 FR 4308) and supplements in particular the most recently published annual list of February 7, 1990 (55 FR 4308). This supplement is based upon a review of additional agency submissions made pursuant to 5 CFR 2637.211(b)(1). It primarily deals with newly-designated "Senior Employee" positions in recently-created separate or merged agencies. Section 2637.211 of this chapter sets forth the standards and procedures to be applied in determining which positions shall be designated. OGE also issued a memorandum to heads of departments, independent agencies, commissions and Government corporations/designated agency ethics officials dated April 26, 1979, giving additional information and guidance on this subject. Section 2637.204 sets forth the standards and procedures to be applied in determining which separate statutory and non-statutory agencies and bureaus shall be designated.

The Director, OGE, in consultation with each department and agency concerned, has determined that the positions set forth in this supplemental document qualify for designation as additional "Senior Employee" positions. All of these positions are newly-designated and primarily reflect the "Senior Employee" positions in the newly-created or merged successor agencies to the Federal Home Loan Bank Board (FHLBB) pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101–73, 103 Stat. 183, August 9, 1989). 5 CFR 2637.216 is hereby amended accordingly. The FHLBB "Senior Employee" designations, published in the February 7, 1990 designation document (55 FR at 4338), are retained since they are effective for those persons leaving such positions prior to the abolition of the FHLBB and the transfer of positions therein to the successor agencies. The Director has further determined, in consultation with the department concerned, that the additional separate statutory agency and separate non-statutory component set forth below in §§ 2637.214 and 2637.215 qualify for such designation.

The "Senior Employee" positions listed in this document and the rulemaking document published at 55 FR 4308–4348 (Feb. 7, 1990) constitute all such positions currently designated under the provisions of subsection 207(d)(1)(C) of title 18 U.S.C. for the departments and agencies listed. In accordance with 5 CFR 2637.211(d), subsequent designation of positions within the department or agencies listed shall not be effective until the last day of the fifth full calendar month after the first publication of a notice by the Director, OGE, of intention to so designate. Such fair notice shall not apply to subsequent designations made under the rule concerning position shifting set forth in 5 CFR 2637.211(i).

Positions automatically designated by 18 U.S.C. subsections 207(d)(1) (A) and (B) are not included in this publication.

Administrative Procedure Act

The Acting Director of the Office of Government Ethics, pursuant to 5 U.S.C. 553 (b)(3)(A) and (d), has found good cause for waiving the general notice of proposed rulemaking and the 30 day delay in effectiveness because this rule is interpretive in nature, and therefore exempt from the notice and delayed effectiveness provisions of 5 U.S.C. 553. Further, this regulation also related to agency organization and, as noted above, there is a five month fair notice provision as to incumbents of newly-designated "Senior Employee" positions.

E.O. 12291

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

Regulatory Flexibility Act

As Acting Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because it only effects Federal employees. Thus, no Regulatory Flexibility Act (5 U.S.C. chapter 6) analysis is required.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this rulemaking does not contain any information collection requirements that require Office of Management and Budget approval thereunder.

List of Subjects in 5 CFR Part 2637

Conflict of interests, Government employees.

Approved: May 31, 1990.
U.S. Office of Government Ethics.
Donald E. Campbell,
Acting Director, Office of Government Ethics.

Accordingly, pursuant to its authority under the Ethics in Government Act and 18 U.S.C. 207, the Office of Government Ethics is amending 5 CFR part 2637 as follows:

PART 2637—[AMENDED]

1. The authority citation for part 2637 continues to read as follows:

Authority: 5 U.S.C. appendixes III, IV; 18 U.S.C. 207.

2. In § 2637.214, the introductory text is republished; and the listing for the separate statutory components is amended by adding at the end of the entry for the Department of the Treasury one new statutory agency to read as set forth below and by redesignating footnote 2, at each place it occurs, as footnote 1:

§ 2637.214 Separate statutory agencies: Designations.

In accordance with the provisions of 18 U.S.C. 207(e) and 5 CFR 2637.205, each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it separate statutory agencies or bureaus as set forth below:

Parent Agency: DEPARTMENT OF THE TREASURY
Separate Statutory Components:
* * * * *
Office of Thrift Supervision
* * * * *

3. In § 2637.215, the introductory text is republished; and the listing for separate components of agencies or bureaus is amended by adding at the end thereof a new entry for the Department of the Treasury with one separate component to read as follows:

§ 2637.215 Separate components of agencies or bureaus: Designations.

In accordance with the provisions of 18 U.S.C. 207(d)(1)(C) and 5 CFR 2637.205, each of the component agencies or bureaus as set forth below is determined, for purposes of 18 U.S.C. 207(c) and this part 2637, to be separate from the remaining agencies and bureaus of its parent agency (except such agencies and bureaus as specified):
* * * * *
Parent Agency: DEPARTMENT OF THE TREASURY
Separate Component:
Federal Law Enforcement Training Center

4. In § 2637.216, the introductory text is amended by redesignating footnote 3 as footnote 2 and revising the footnote text to read as follows; and the "Senior Employee" designation listings for the various agencies are amended as set forth below by:

A. Adding after the listing for the Defense Nuclear Agency and before the listing for the National Security Agency the newly-created Defense Nuclear Facilities Safety Board which has no "Senior Employee" designated positions;

B. Adding at the end of the listing for the Office of the Secretary of the Department of Housing and Urban Development one newly-designated position;

C. Adding at the end of the listing for the Department of the Treasury the newly-created Office of Thrift Supervision and ninety-nine newly-designated positions thereof;

D. Adding at the end of the listing for the Federal Deposit Insurance Corporation one newly-designated position;

E. Redesignating footnote 3 at the reference to the Federal Home Loan Bank Board as footnote 4 and revising the text thereof;

F. Adding after the listing for the Federal Home Loan Mortgage Corporation and before the listing for the Federal Labor Relations Authority, the newly-created Federal Housing Finance Board and twelve newly-designated positions thereof;

G. Adding after the listing for the Overseas Private Investment Corporation and before the listing for the Panama Canal Commission, the newly-created Oversight Board of the Resolution Trust Corporation and seven newly-designated positions thereof; and

H. Adding after the listing for the Railroad Retirement Board and before the listing for the Securities and Exchange Commission the newly-created Resolution Trust Corporation and seventeen newly-designated positions thereof:

§ 2637.216 "Senior Employee" designations.

In accordance with § 2637.211(b)(1), the following employee positions have been designated as "Senior Employee" positions for purposes of subsections 207(b)(ii) and (c) of title 18, U.S.C., as amended.[2]
* * * * *

AGENCY: DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Positions: No section 207(d)(1)(C) Designations
* * * * *

AGENCY: DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Positions:

Office of the Secretary
* * * * *
SES** Assistant to the Secretary for Policy and Communication
* * * * *

AGENCY: DEPARTMENT OF THE TREASURY

Positions:
* * * * *

Office of Thrift Supervision [3]

Boston

• District Director

---

[2] All positions designated pursuant to section 207(d)(1)(C) not previously designated before the **Federal Register** publication of February 7, 1990 are marked by a single asterisk (*). All positions designated pursuant to section 207(d)(1)(C) not previously designated before the **Federal Register** publication of June 19, 1990 are marked by a double asterisk (**). Positions automatically designated by sections 207(d)(1) (A) and (B) are not shown.

[3] These newly-designated "Senior Employee" positions reflect the transfer of positions from the

Continued

New York

- Senior Vice President, Director
- Vice President, Supervisory Agent
- Vice President, Deputy Director
- Vice President, New York Institute/ Supervisory Agent
- Vice President, Supervisory Agent
- Vice President, Director
- District Director

Pittsburgh

- District Director
- Senior Supervisory Agent

Atlanta

- Deputy Director of Supervision Policy
- Managing Supervisory Agent
- Deputy General Counsel
- Division Director, Agency Support
- Deputy Director, Examinations
- Acting Principal Supervisory Agent
- Deputy District Counsel
- Group Executive Officer—Agency

Cincinnati

- Senior Vice President, Director Examinations
- Senior Executive Vice President/Secretary
- Senior Vice President, Director Policy and Oversight
- Senior Vice President, Industry Development, Supervisory Agent
- Senior Vice President, Supervisory Agent
- Vice President, Supervisory Agent

Indianapolis

- District Director

Chicago

- Supervision Division Head/Senior Vice President
- District Director
- Examinations Division Head/Senior Vice President

Des Moines

- Director of Special Regulatory Processes
- Director of General Regulatory Processes
- Director, Regulatory Acts
- Director, Support Staff Services

Dallas

- District Director
- Director of Supervision
- Senior Supervisory Agent
- Senior Supervisory Agent
- Senior Supervisory Agent
- Senior Supervisory Agent
- Director of Examinations
- Director, Criminal Referrals
- Regulatory Budget Analyst, II
- Director, Regulatory Support Service
- Assistant Director, Economic and Industry Analysis
- Training Director

Topeka

- District Director
- Director, Supervision
- Deputy District Director for Examinations

San Francisco

- Deputy Director, General Surveillance
- Deputy Director, Special Surveillance
- District Director
- Deputy Director, Systems and Services
- Deputy Director, Major Institutions
- District Counsel
- Assistant Vice President, Associate General Counsel
- Assistant Director, Information Services
- District Application and Loan Underwriter
- District Accountant
- Assistant Director, Technical Services
- Assistant Director, General Surveillance
- Assistant Director, General Surveillance
- Assistant Director, General Surveillance
- Assistant Director, Special Surveillance
- Assistant Director, Special Surveillance, Management Consignment Programs
- Assistant Director, Major Institutions
- Assistant Director, Major Institutions

Seattle

- District Director
- Manager, Examinations and Supervision

Washington, DC

- Chief Counsel
- Principal Senior Deputy Director
- Senior Deputy Director for Public Affairs
- Senior Deputy Director for Management
- Senior Deputy Director for Supervision
- Senior Advisor
- Director of Communication Services
- Deputy Executive Director for Congressional Relations
- Deputy to Director for FDIC and RTC
- Attorney-Adjudication
- Supervisor Attorney-Advisor, (Legislation/ Finance)
- Supervisor Attorney-Advisor (General Law)
- Supervisor Attorney-Advisor (Finance)
- Deputy Director, Information Resource Management
- Deputy Director, Human Resources and Management Systems
- Deputy Director
- Controller
- Director, Administrative Services Division
- Senior Deputy Director, Supervisory Operations
- Managing Director, Supervision
- Director, District Oversight
- Senior Deputy Director, Supervisor Policy
- Managing Director, Surveillance and Oversight
- Managing Director, Policy
- Director, Capital Markets
- Director, Regulatory Programs
- Director, Compliance Programs
- Chief Accountant
- Director, Industry Relations
- Senior Deputy Director, Thrift Accounts
- Senior Project Manager
- Director, Capital Enhancement Matchmaker Program

* * * * *

AGENCY: FEDERAL DEPOSIT INSURANCE CORPORATION

Positions:

* * * * *

FDIC E–3** General Counsel, Operations Branch

* * * * *

AGENCY: FEDERAL HOME LOAN BANK BOARD [4]

* * * * *

AGENCY: FEDERAL HOUSING FINANCE BOARD [5]

Positions:

- TX—Managing Director
- TX—Director of the Office of the Administration
- TX—General Counsel
- TX—Deputy Director of the Office of the Administration
- TX—Director of the Office of Public Affairs
- TX—Assistant to the Managing Director
- TX—Director of the Office of Bank Operations
- TX—Director of the Office of Bank Oversight and Supervision
- TX—Director of the Office of Congressional Liaison
- TX—Director of the Office of Housing Finance Programs
- TX—Director of the Office of Policy Evaluation
- TX—Inspector General

* * * * *

AGENCY: OVERSIGHT BOARD RESOLUTION TRUST CORPORATION [6]

Positions:

- EL–V—President and Chief Executive Officer
- EL–IV—Vice President and General Counsel
- EL–IV—Deputy General Counsel
- EL–IV—Vice President, Finance and Administration
- EL–IV—Vice President, Policy
- EL–II—Director, Evaluation and Review
- EL–II—Director, Administration and Control

AGENCY: RESOLUTION TRUST CORPORATION [7]

Positions:

RTC E–5** Executive Director

Federal Home Loan Bank Board pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 183 (1989).

[4] Office of Thrift Supervision (Department of the Treasury), portions of the Federal Deposit Insurance Corporation, Oversight Board of the Resolution Trust Corporation, Resolution Trust Corporation, and Federal Housing Finance Board are successor agencies pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 1023 Stat. 183 (1989).

[5] These newly-designated "Senior Employee" positions reflect the transfer of positions from the Federal Home Loan Bank Board pursuant to the Financial Institutions Reform, Recovery, and Enforcmeent Act of 1989, 103 Stat. 183 (1989).

[6] These newly-designated "Senior Employee" positions reflect the transfer of positions from the Federal Home Loan Bank Board pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 183 (1989).

[7] These newly-designated "Senior Employee" positions reflect the transfer of positions from the Federal Home Loan Bank Board pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 183 (1989).

RTC E-4** Director, Asset and Real Estate Management
RTC E-4** Director, Funding Operations
RTC E-4** Director, Resolution and Operations
RTC E-3** Director (Consolidated Office)
RTC E-3** Deputy Director, Asset Marketing
RTC E-3** Deputy Director, Contract Management and Asset Operations
RTC E-3** Deputy Director, Asset Disposition
RTC E-3** Regional Director (East)
RTC E-3** Regional Director (Central)
RTC E-3** Regional Director (West)
RTC E-3** Regional Director (Southwest)
RTC E-3** Deputy Director, Resolutions (Major Transactions)
RTC E-4** General Counsel
RTC E-3** Deputy General Counsel (Regions)
RTC E-3** Deputy General Counsel (Corporation)
RTC E-3** Deputy Director, Regional Operations

* * * * *

[FR Doc. 90-14111 Filed 6-18-90; 8:45 am]
BILLING CODE 6345-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 242, and 244

[INS #1209-90]

RIN 1115-AB19

Documentary Requirements: Waivers; Proceedings to Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing and Appeal; Suspension of Deportation and Voluntary Departure

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements changes to the Immigration and Nationality Act, as amended by the Anti-Drug Abuse Act of 1988, Public Law 100-690, by providing clarification of exclusion, deportation, and custody proceedings in the case of an alien convicted of an aggravated felony. This rule will facilitate the detection and removal of alien aggravated felons while protecting their due process rights.

EFFECTIVE DATE: This interim rule is effective June 19, 1990. Written comments must be received on or before July 19, 1990.

ADDRESSES: Submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, room 2011, 425 I Street, NW., Washington, DC 20536.

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) 514-0747.

SUPPLEMENTARY INFORMATION:

1. Background

In an effort to deal more effectively and expeditiously with the involvement of certain aliens in serious criminal activities, particularly narcotics trafficking, Congress has amended the Immigration and Nationality Act (INA) by enacting legislation such as the Anti-Drug Abuse Act of 1986, the Immigration Reform and Control Act of 1986 (IRCA), and the Anti-Drug Abuse Act of 1988. Among the provisions of the Anti-Drug Abuse Act of 1988 are enhanced penalties for a defined category of offender, aliens convicted of aggravated felonies. The procedures established by this rule will serve the public interest by facilitating the detection and removal of alien aggravated felons, while at the same time affording them their due process rights under law. What follows is an analysis of the amendments and a discussion of the conforming regulatory changes to this chapter.

2. Changes Based on the Anti-Drug Abuse Act of 1988

Subtitle J (sections 7341-7350) of this Act, entitled Provisions Relating to the Deportation of Aliens Who Commit Aggravated Felonies, amended several sections of the Immigration and Nationality Act including sections 101(a)(43), 212(a)(17), 241(a)(4), 241(a)(14), 242(a), and 244(e), to incorporate references to aliens convicted of "aggravated felonies" and to provide for specific detention and expulsion provisions for aliens within this category. Section 242A of the Act was added to provide for special deportation proceedings in correctional facilities for aliens convicted of aggravated felonies. Summaries of the pertinent revisions are as follows:

Section 101(a)(43) of the Act was amended by adding and defining "aggravated felony" for use in exclusion, deportation, custody, and prosecution proceedings in the cases of aliens who have been convicted of aggravated felonies.

Section 212(a)(17) of the Act was amended to bar the reentry of aliens convicted of aggravated felonies for a period of ten years, five years beyond the bar for other deported aliens.

Section 242(a) of the Act was amended by requiring the Attorney General to take custody of aliens convicted of aggravated felonies upon completion of the alien's sentence, and to retain such aliens in custody, pending deportation.

Section 244(e) of the Act was amended by making the provisions related to voluntary departure in lieu of deportation inapplicable to aliens deportable on the basis of a conviction for an aggravated felony.

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 Immigration and Naturalization Service is invoking the "good cause" exception to the notice of proposed rulemaking requirement of 5 U.S.C. 553(b). The justification for waiving notice of proposed rulemaking is as follows: Notice of this rule and relevant public procedure would be contrary to the public interest and the intent of the statute. This rule is necessary in order to ensure the implementation of procedures required by the Immigration and Nationality Act, as amended by the Anti-Drug Abuse Act of 1988. These amendments contain procedural changes to the deportation process in cases involving aliens who have been convicted of aggravated felonies. The changes are designed to ensure the integrity of the deportation process and protect the public interest. Therefore, the Service believes the public interest is served by invoking the "good cause" exception to the notice of proposed rulemaking and the 30-day effective date requirements of 5 U.S.C. 553 (b) and (d), and by implementing this rule effective immediately with a 30-day comment period.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, under OMB control number 1115-0025.

List of Subjects

8 CFR Part 212

Administrative practice and procedures, Aliens, Passports and visas.

8 CFR Parts 242 and 244

Administrative practice and procedures, Aliens, Authority delegations, Detention.

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

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252; 8 CFR part 2.

2. In § 212.2, paragraph (a) is revised to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.

(a) *Evidence.* Any alien who has been deported or removed from the United States, who is applying for a visa, admission to the United States, or adjustment of status, must present proof to the satisfaction of the consular or immigration officer that the alien has remained outside the United States for more than five successive years, or ten successive years in the case of an alien convicted on or after November 18, 1988, of an aggravated felony, following the last deportation or removal. Any alien who does not present proof of absence from the United States for more than five successive years, or ten successive years in the case of an alien convicted of an aggravated felony, which is satisfactory to the consular or immigration officer, or who has not remained outside the United States for the requisite period, must apply for permission to reapply as provided under this part. A temporary stay in the United States with the approval of the Attorney General, under section 212(d)(3) of the Act, does not interrupt the five or ten successive year absence requirement.

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362; 8 CFR part 2.

4. Section 242.2 is amended by revising the introductory text for paragraph (c)(1) and the eighth sentence of paragraph (c)(2) to read as follows:

§ 242.2 Apprehension, custody and detention.

* * * * *

(c) *Warrant of arrest.* (1) At the time of issuance of the Order to Show Cause, or at any time thereafter and up to the time the respondent becomes the subject of a duly issued warrant of deportation, the respondent may be arrested and taken into custody under the authority of a warrant of arrest, provided that, in the case of a respondent convicted on or after November 18, 1988, of an aggravated felony as defined in section 101(a)(43) of the Act, the respondent shall not be released from custody unless a determination is made by the District Director that the respondent's departure cannot be effected, or until respondent becomes subject to supervision under the authority contained in section 242(d) of the Act. However, such warrant may be issued by no other than a: * * *

* * * * *

(2) * * * Except in cases involving an alien convicted on or after November 18, 1988, of an aggravated felony as defined in section 101(a)(43) of the Act, a respondent on whom a warrant of arrest has been served may apply to any officer authorized by this section to issue such a warrant for release or for amelioration of the conditions under which he/she may be released. * * *

* * * * *

5. In section 242.5, paragraph (a)(2) is amended by adding a new sentence immediately after the heading to read as follows:

§ 242.5 Voluntary departure prior to commencement of hearing.

(a) * * *

(2) *Authorization.* Notwithstanding any other provision of this section, an alien convicted on or after November 18, 1988, of an aggravated felony as defined in section 101(a)(43) of the Act, shall not be eligible for voluntary departure prior to commencement of hearing. * * *

* * * * *

PART 244—SUSPENSION OF DEPORTATION AND VOLUNTARY DEPARTURE

6. The authority citation for part 244 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252, 1254; 8 CFR part 2.

7. Section 244.1 is amended by adding a new sentence immediately before the first sentence begining with the phrase "Pursuant to part 242 * * *".

§ 244.1 Application.

Notwithstanding any other provision of this chapter, an alien who is deportable because of a conviction on or after November 18, 1988, for an aggravated felony as defined in section 101(a)(43) of the Act, shall not be eligible for voluntary departure as prescribed in part 242 of this chapter and section 244 of the Act. * * *

* * * * *

Dated: February 21, 1990.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 90–14158 Filed 6–18–90; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 245

INS Number 1277–90

Adjustment of Status Under Public Law 101–167

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 599E of Public Law 101–167, by providing for adjustment of status to lawful permanent resident of certain parolees from the Soviet Union, Vietnam, Laos, and Cambodia. It ensures that these individuals, paroled into the United States between August 15, 1988 and September 30, 1990, the sunset date of Public Law 101–167, will have the opportunity to apply for immigrant status.

DATES: This interim rule is effective June 19, 1990. Comments must be received on or before July 19, 1990.

ADDRESSES: Written comments should be submitted, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, room 2011, 425 I Street, NW., Washington, DC 20536. Please include INS number 1277–90 on the mailing envelope to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, telephone (202) 633–5014.

SUPPLEMENTARY INFORMATION: Public Law 101–167, the Foreign Operations Appropriations Act for Fiscal Year 1990, provides for the adjustment of status to lawful permanent resident of certain nationals of the Soviet Union, Vietnam, Laos, and Cambodia who, being of special interest to the United States, were inspected and granted parole into the United States during the period beginning on August 15, 1988, and ending on September 30, 1990, after being denied refugee status. The statute requires such aliens to have been physically present in the United States

for at least one year and to be physically present in the United States on the date the application for such adjustment is filed. The date of approval shall be recorded as the date of the alien's inspection. No immigrant visa number is required for such adjustment. A new § 245.10 is being added to part 245 to establish the aliens who are eligible, the eligibility criteria, and the application procedures.

Applicants for adjustment of status under this new section shall not be subject to the exclusion ground provisions set forth in the following paragraphs of section 212(a) of the Immigration and Nationality Act; (14), The requirement for a labor certification; (15), public charge; (20), documentary requirement of an immigrant visa; (21), requirement of a visa petition; (25), illiteracy; (28), political opinion (other than subparagraph (F); and (32), foreign medical graduates. Any other provision of section 212(a) may be waived except (23)(B), narcotics trafficking; (27), activities prejudicial to the public interest; (29), activities subversive to the national security; or (33), Nazi association, with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date are impracticable and unnecessary as the changes have been mandated by the passage of Public Law 101–167. Early implementation will be advantageous to the intended beneficiaries.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule 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 Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 245 of Chapter I of title 8, of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

2. A new § 245.10 is added to read as follows:

§ 245.10 Adjustment of status of certain Soviet and Indochinese parolees under the Foreign Operations Appropriations Act for Fiscal Year 1990 (Pub. Law 101–167).

(a) *Application.* Each person applying for benefits under section 599E of Public Law 101–167 must file Form I–485 (Application for Lawful Permanent Residence) with the district director having jurisdiction over the applicant's place of residence and must pay the appropriate fee. Each application shall be accompanied by Form I–643 (Health and Human Services Statistical Data Sheet), the results of a medical examination given in accordance with § 245.8 of this part, and, if the applicant has reached his or her 14th birthday but is not over 79 years of age, Form G–325A and an applicant fingerprint card (Form FD–258).

(b) *Aliens eligible to apply for adjustment.* The benefits of this section shall only apply to an alien who:

(1) Was a national of the Soviet Union, Vietnam, Laos, or Cambodia, and

(2) Was inspected and granted parole into the United States during the period beginning on August 15, 1988, and ending on September 30, 1990, after being denied refugee status.

(c) *Eligibility.* Benefits under Section 599E of Public Law 101–167 are limited to any alien described in paragraph (b) of this section who:

(1) Applies for such adjustment,

(2) Has been physically present in the United States for at least one year and is physically present in the United States on the date the application for such adjustment is filed,

(3) Is admissible to the United States as an immigrant, except as provided in paragraph (d) of this section, and

(4) Pays a fee for the processing of such application.

(d) *Waiver of certain grounds for inadmissibility.* The provisions of paragraphs (14), (15), (20), (21), (25), (28) (other than subparagraph (F), and (32) of section 212(a) of the Act shall not apply to adjustment under this section. The Attorney General may waive any other provision of section 212(a) (other than paragraph (23)(B), (27), (29), or (33)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(e) *Date of approval.* Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as a lawful permanent resident as of the date of the alien's inspection and parole described in paragraph (b)(2) of this section.

(f) *No offset in number of visas available.* When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act.

Dated: May 16, 1990.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 90–14075 Filed 6–18–90; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket 90–075]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Massachusetts to the list of validated brucellosis-free States. We have determined that Massachusetts meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on moving breeding swine from Massachusetts.

EFFECTIVE DATE: July 19, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. William C. Stewart, Chief Staff Officer, Swine Disease Staff, VS, APHIS, USDA, room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective on March 6, 1990 (55 FR 7882–7883, Docket 89–213), we amended the brucellosis regulations in 9 CFR part 78 that, among other things, prescribe conditions for the interstate movement of swine based upon the disease status of the herd, area, or State from which the animal originates. We amended § 78.43 of the regulations, which lists validated brucellosis-free States, to include Massachusetts.

Comments on the interim rule were required to be received on or before May 7, 1990. We did not receive any comments. The facts presented in the interim rule still provide the basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

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

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

Herd owners in Massachusetts will be affected by this rule. It allows breeding swine to be moved interstate from Massachusetts without being tested for brucellosis. Approximately 440 sows are tested annually for brucellosis in order to be eligible for interstate movement from Massachusetts at an average cost to the seller of $4.75 per test. Using these numbers, we estimate that removing the testing requirement would result in a potential annual savings of $2,090 for Massachusetts swine herd owners. Of the approximately 3,000 swine herd owners nationwide who regularly ship breeding swine interstate, 4 herd owners regularly ship breeding swine interstate from Massachusetts. Of these herd owners, 3 would be considered small entities.

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

Paperwork Reduction Act

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 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 78

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

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.43 that was published at 55 FR 7882–7883 on March 6, 1990.

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

Done in Washington, DC, this 13th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14146 Filed 6–18–90; 8:45 am]

BILLING CODE 3410–34–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 616, 618, and 619

RIN 3052–AA94

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Coordination; General Provisions; Definitions

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations that amend 12 CFR parts 613, 614, 615, 616, 618, and 619, that were published as proposed regulations on November 3, 1988, 53 FR 44438. These final regulations reflect amendments to the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001–2279aa–14, (Act) made by the Farm Credit Amendments Act of 1985 (1985 Amendments), Public Law 99–190, the Farm Credit Act Amendments of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509 (1986 Amendments), and the Agricultural Credit Act of 1987, Public Law 100–233 (1987 Act). These final regulations do not include the provisions of parts 614 and 618 published for comment on November 3, 1988, that relate to the general financing agreement, lending limits, appraisal standards, loan participations, financially related services, and bank supervision of associations. The FCA intends to republish proposed regulations relating to these provisions in the near future. Some sections that were proposed to be amended but were not adopted are redesignated in the final regulation.

The final regulations reconcile authorities of institutions created from the mergers required or authorized by the 1987 Act. The 1987 Act required the merger of Federal land banks (FLBs) and Federal intermediate credit banks (FICBs) in each Farm Credit district to form Farm Credit Banks (FCBs); and authorized the merger of Federal land bank associations (FLBAs) and Federal land credit associations (FLCAs) with production credit associations (PCAs) to form agricultural credit associations (ACAs), the merger of FCBs with banks for cooperatives (BCs) to form agricultural credit banks (ACBs), and the merger of BCs to form a National Bank for Cooperatives (NBC or Co-Bank). In addition, the 1987 Act authorizes the transfer of long-term real estate lending authority from a FCB to a FLBA when approved by the shareholders of both institutions, resulting in a FLCA. The 1987 Act requires such a transfer when a FLBA merges with a PCA to form an ACA. The effect of the final regulations is to set forth the lending authorities of the resulting entities as well as those of the constituent entities. The final regulation also makes necessary conforming changes in parts 613, 614, 615, 618 and 619, to reflect the restructuring possibilities and the merger of certain of the BCs under a national charter. The final regulations make other changes necessary to reflect statutory changes made by the 1985 Amendments and the 1987 Act, such as expanding the class of entities eligible to borrow from the BCs and deleting certain required FCA approvals. In addition, the final regulations reorganize and reorder sections in parts 613 and 614 for greater clarity and make other clarifying, technical, and minor substantive

changes. Part 616 is removed and reserved.

DATES: These regulations shall become effective on July 19, 1990 during which either or both Houses of Congress are in session. Notice of the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:
Dennis K. Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444.
or
Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On November 3, 1988, the FCA published for public comment (53 FR 44438) proposed amendments to 12 CFR parts 613, 614, 615, 616, 618, and 619 relating to Farm Credit borrower eligibility, Farm Credit institutions' lending authorities and relationships, lending limits, appraisal standards, and related definitions and technical amendments, including revisions necessary to conform the regulations to the amendments to the Farm Credit Act of 1971 made by the 1985 Amendments, the 1986 Amendments and the 1987 Act. The proposed amendments were divided into three areas. In part I, the FCA Board proposed regulations reconciling the authorities of Farm Credit System banks and associations that are reorganized pursuant to the 1987 Act. Part II set forth proposed amendments to clarify credit-related issues not specifically addressed in the 1987 Act. Part III proposed the deletion of certain requirements for credit-related FCA approvals. The comment period for these proposed amendments closed on December 5, 1988.

In response to the published proposed regulations, the FCA received 32 letters of comment from Farm Credit institutions, an appraisal industry professional group, and an individual respondent. Farm Credit institutions responding to the proposed regulations included the Farm Credit Corporation of America (FCCA), the FCBs of Baltimore, Texas, St. Paul, Louisville, and Springfield, the BCs of Springfield and St. Paul, as well as the Central Bank for Cooperatives (CBC), one of the predecessors of the NBC. In addition, comments from Farm Credit associations and regional service centers (FLBA and PCA branches operating under joint management) from the Baltimore, St. Louis, and Texas Farm Credit districts were received along with comments from the general public and the American Society of Farm Managers and Rural Appraisers (ASFMRA). The comments were reviewed and considered in the development of these final regulations that are hereby adopted. The comments received can be divided into eight major areas of concern, which are:

1. Borrower eligibility;
2. Lending authorities and requirements for banks and associations operating under titles I and II of the Act;
3. Lending authorities and requirements for banks for cooperatives;
4. Appraisal and security requirements and related issues;
5. Bank/association relationship;
6. Lending limits;
7. Financially related services; and
8. Technical revisions.

The FCA does not adopt at this time certain amendments proposed on November 3, 1988, relating to general financing agreements, appraisal requirements, lending limits, loan participations, bank/association relationships and financially related services, as described more fully below. In order to address issues raised by the comments on these proposals, the FCA Board concluded that additional public comment would be needed. The FCA Board intends to republish proposed amendments to these regulations in the near future. Comments related to these topics will be discussed at that time.

The following discussion summarizes the comments received on proposed amendments adopted as final regulations, the FCA's response to the comments, and changes in the final regulations from the proposed regulations, as well as the changes made to existing regulations by the final regulations. The discussion is presented in the numerical order of sections of existing regulations with explanations of proposed amendments to those sections, followed by an explanation of the amendments and revisions made to those sections by the final regulation. The regulatory amendments are set forth in the order they will appear in the amended regulations. Subparts A and E of part 614 of the final regulation, which are reordered and reorganized, are set forth in their entirety for clarity. Sections of existing regulations redesignated in the final regulation are set forth in the table that follows:

Redesignation Table

Existing section	New section
614.4030	614.4100
614.4040	614.4145
614.4050	614.4135
614.4060	614.4140
614.4140	614.4150
614.4150	614.4160
614.4160	613.3005
614.4190 (c) and (d)	614.4130 (a) and (b)
614.4220	614.4240
614.4240(b)	614.4130(c)
619.9020	619.9025
619.9060	619.9065
619.9135	619.9146
619.9140	619.9150
619.9150	619.9160
619.9160	619.9165

Part 613—Eligibility and Scope of Financing

Subpart A—General

Section 613.3000

Section 613.3000 of existing regulations, which sets forth the authority of Farm Credit banks and associations generally, was proposed to be revised to reflect the corporate restructuring provided for by the 1987 Act, the basic lending authorities of the resulting entities, and their eligibility requirements. The proposed amendment is adopted with minor technical adjustments.

Section 613.3005

Section 614.4160 of existing regulations, which sets forth the basic lending objectives and scope of financing of Farm Credit institutions, has been redesignated as a new § 613.3005 and amended as described below. Section 614.4160(c) of existing regulations, which requires banks to adopt policies to ensure that credit and lending standards are administered to ensure attainment of the institution's lending objective, was proposed to be amended to delete the requirement for FCA prior approval of such policies. Comments were received suggesting that this paragraph was not intended to apply to BCs, notwithstanding the use of the term "bank," because of the provisions of the paragraph requiring bank policies to ensure that loans made under the provisions of § 613.3020 are made primarily for an agricultural purpose and to ensure that nonagricultural assets not be given undue weight in the loan decision or collateral evaluation.

The FCA believes that the reference to § 613.3020 makes it clear that the "agricultural purpose" requirements of § 614.4160(c) are not intended to apply to BCs, since they do not make such loans. The FCA does not agree that BCs are excluded from the applicability of the requirement to adopt policies

ensuring that credit and lending standards are administered consistent with the institution's lending objective. The final regulation further clarifies that the requirements for policies governing loans made under the eligibility requirements of § 613.3020 apply only to institutions making such loans and deletes the requirement for FCA prior approval of such policies. In addition, a technical revision to paragraph (a) is made in the final regulation to correct an error by substituting the term "speculative appreciation" for "speculative application." The section is otherwise unchanged.

Subpart B—Eligibility to Borrow From Federal Land Banks and Production Credit Associations

Subpart B of part 613 addresses the eligibility requirements for borrowing from institutions operating under titles I and II of the Act (FCBs, ACBs, FLCAs, PCAs and ACAs) for farmers, ranchers, and producers or harvesters of aquatic products.

Section 613.3010

Section 613.3010 of existing regulations, which defines "person," has been retitled "Definitions," expanded to incorporate definitions relocated from § 613.3020 (without substantive change), and reorganized to arrange the definitions in alphabetical order in the final regulation.

Section 613.3020

Section 613.3020 of existing regulations, which sets forth requirements for eligibility to borrow from an institution operating under titles I or II of the Act as a farmer, rancher or producer or harvester of aquatic products, was proposed to be amended to add a requirement to demonstrate compatibility of the applicant's agricultural operation with local agricultural conditions and to clarify eligibility requirements for legal entities.

Comments were received from 10 Farm Credit institutions and one individual objecting to the requirement of the proposed amendment of § 613.3020(b)(1) that the applicant demonstrate that the agricultural operation is compatible with normal agricultural operations within the Farm Credit institution's territory. Respondents asserted that the proposed amendment was an inappropriate extension to all applicants of the requirement of existing regulations for a legal entity owned by one or more ineligible entities to demonstrate that it can conduct its operations as a counterpart to the normal farm or aquatic business that is eligible to borrow. Respondents expressed concern that such a requirement would place Farm Credit lenders in the difficult position of having to make judgments regarding what is normal and compatible and would be overly restrictive.

Respondents also requested clarification concerning the reference to the association examination in proposed § 613.3020(b)(3) in light of the proposed deletion of the requirements of § 614.4051 for bank credit reviews of associations. The proposed regulation would have required that loans made to entities owned by ineligible entities be reported to the funding bank and the FCA as part of the association's examination.

FCA Response. A Farm Credit institution, in its determination of borrower eligibility and its credit analysis, must be aware of the inherent risks involved in financing agricultural operations that are unique or foreign to its territory. Such operations must be closely reviewed for such factors as marketability of products, availability of management and labor expertise, and marketability of the collateral when the loan is in a distressed condition. Such factors must be considered in making a credit decision on an application for financing of agricultural operations that have characteristics unique and/or specialized in comparison to the predominant farming practices employed within the institution's territory. However, the FCA has concluded that these matters can be addressed as part of the credit risk identification and analysis process and need not be stated as an eligibility requirement. Accordingly, the FCA does not adopt the compatibility requirement for all applicants in the final regulation, but applicants that are legal entities owned by ineligible legal entities will continue to be subject to the requirement of existing regulations to demonstrate that their operations can be conducted as a counterpart to normal farm and aquatic businesses that meet the eligibilty requirements.

In response to the request for clarification of the reference to association examinations in the proposed regulation, the reference was to the FCA examination of associations. However, the final regulation merely requires the institution to identify such loans in such a manner as to permit the number and volume to be monitored. This will allow the FCA or the funding bank to review such loans as the need arises. In the final regulation, the contents of existing § 613.3020 have been reworded for greater clarify, and the definitions relocated to § 613.3010 without substantive change.

Section 613.3040

Section 613.3040 of existing regulations, which addresses rural home lending, was proposed to be amended to reflect the new corporate structures emerging under the 1987 Act and to require the funding bank to make periodic reviews of association lending when rural housing loans approach the statutory 15-percent limit (rather than when 15 percent is exceeded, as the existing regulation requires). The FCCA objected that it would be difficult to tell when rural home loans "approach" 15 percent.

After considering the comment, the FCA has concluded that since FCBs and ACBs are themselves subject to a statutory 15-percent district limitation on rural housing loans, there is adequate incentive for the banks to monitor association rural home lending without regulatory requirements regarding how or when such monitoring must be accomplished. The FCA's monitoring of compliance with the statutory limits can be accomplished in the course of its examination of banks and associations. Accordingly, the requirement of proposed § 613.3040(d)(3) for the bank to conduct periodic reviews of association rural residence lending when it approaches the statutory limit is deleted in the final regulation. However, the FCA emphasizes that monitoring rural residence lending to ensure that the statutory limit is not exceeded is the responsibility of each association and its funding bank.

Section 613.3045

Section 613.3045 of existing regulations, which addresses the financing of basic processing and marketing activities, was proposed to be amended to reflect restructuring under the 1987 Act and to make minor technical changes. In response to comments, the final regulation clarifies that the regulation is not applicable to BCs. The final regulation further clarifies that no substantive change was intended in the throughput requirements of the existing regulation by restoring the word "produces" in the final regulation, which had been replaced in the proposed amendment by the word "provides." Also, the phrase "vertical integration" has been substituted for "forward integration," to clarify that reverse integration as well as forward integration can be financed provided eligibility requirements are met.

Section 613.3050

Section 613.3050 of existing regulations, which addresses the eligibility of farm-related businesses for funding by FLBs and PCAs, was proposed to be amended to reflect the 1987 Act restructuring and the potential for the transfer of long-term lending authority to FLBAs. In response to comments, the final regulation clarifies that a PCA is not authorized to make long-term mortgage loans to farm-related businesses. The final regulation authorizes FCBs, ACBs, ACAs, FLCAs to make long-term real estate mortgage loans to such businesses and authorizes PCAs and ACAs to make short- and intermediate-term loans to such businesses.

Subpart C—Eligibility of Financial Institutions to Borrow from Federal Intermediate Credit Banks

Section 613.3060

Section 613.3060 of existing regulations, which enumerates the types of institutions that were eligible for funding by the FICB, is amended in the final regulation to reflect new corporate entities that have resulted from the implementation of the restructuring provisions of the 1987 Act. Specifically, it reflects the authority of FCBs and ACBs to lend to and discount loans for PCAs, ACAs, FLCAs and other financing institutions that are not Farm Credit institutions (OFIs) that are eligible for financing by FCBs and ACBs.

Subpart D—Eligibility of Cooperatives To Borrow From a Bank for Cooperatives

Section 613.3110

Section 613.3110 of existing regulations, which addresses eligibility to borrow from banks for cooperatives (which is defined in the proposed and the final regulations to include ACBs with respect to their title III powers), was proposed to be amended to reflect the expansion of eligibility under the 1985 Amendments and the 1987 Act to certain legal entities, notwithstanding their failure to meet general cooperative eligibility standards. These were entities having loans, commitments, or guarantees from the Rural Electrification Administration or the Rural Telephone Bank; entities that have eligible cooperative entities as majority owners; and entities that own a majority interest in an eligible cooperative, for the purpose of funding the cooperative. In addition, the regulation was proposed to be amended to reflect the provisions of the 1987 Act authorizing a BC to restrict borrower stock requirements for eligible cooperatives whose loans are government-guaranteed to one share of voting stock for the guaranteed portion of a loan.

No comments were received on the proposed amendment of this section. The final regulation reflects the expanded eligibility provisions of the 1987 Act as they were proposed on November 3, 1988, with minor technical changes to clarify that the new eligible entities are considered eligible cooperatives for the purpose of determining eligibility to borrow under § 3.7(a), notwithstanding their failure to meet the cooperative eligibility requirements of § 3.8(a) of the Act and § 613.3110(b), and to clarify that such entities are only eligible to borrow under § 3.7(a), and not under § 3.7(b) unless they are also eligible cooperatives. The final regulation does not adopt the proposed amendment incorporating in the regulation the statutory authorization to restrict stock requirements for eligible cooperatives having only government-guaranteed loans to one share of voting stock. Such a restriction would be more appropriately reflected in the capital adequacy related regulations found in part 615. A new § 613.3120 has been added in the final regulation setting forth persons eligible to borrow from a BC under § 3.7(b) of the Act.

Part 614—Loan Policies and Operations

The various provisions of part 614 relating to lending authorities, general loanmaking policies, and loan terms and conditions were proposed to be amended to reflect the restructuring mandated and authorized by the 1987 Act and to set forth the lending authorities of the resulting new entities, reconciling authorities in entities created from the merger of different types of entities where necessary. In addition to substantive changes made in response to comments, the FCA has made a number of technical changes to promote clarity and accessibility, including reordering and rearranging provisions of existing regulations and proposed amendments. The reordering does not itself make substantive changes. Substantive changes from the existing regulation and from the proposed amendment are explained below.

As reordered in the final regulation, the lending authorities of the Farm Credit System bank and associations are relocated from subpart C to subpart A, while subpart B continues to address chartered territories. Sections of existing regulations addressing bank and association lending and supervisory relationships are relocated to subpart C, along with sections of the proposed regulations addressing transfers of lending authority. Subpart D continues to address general loan policy guidelines. However, § 614.4160 of subpart D is relocated to part 613 and redesignated as § 613.3005, and §§ 614.4140 and 614.4150 of subpart D are redesignated as §§ 614.4150 and 614.4160, respectively. Subpart E of the final regulation continues to address loan terms and conditions, but is expanded to include security requirements formerly set forth in subpart F and is restructured to set forth required loan terms and conditions by types of loans rather than by types of institutions. Appropriate cross-references to subpart E are included in the lending authorities of the institutions authorized to make such loans, which are set forth in subpart A.

Subpart A—General Authorities

Subpart A is revised in its entirety to set forth the lending authorities of the various institutions as described below under "Subpart C—Lending Authorities." The discussion that follows summarizes comments received on proposed amendments to existing sections of subpart A and the disposition of these sections in the final regulation. Sections of existing subpart A (as well as sections of existing subparts E and F) relating to the bank/association lending and supervisory relationships are redesignated and relocated to subpart C, as explained more fully below, with minor technical and nomenclature changes. Proposed substantive amendments to these sections are not adopted. These sections will be the subject of a separate proposal to amend which will consider comments received on these sections in the November 3, 1988, proposal.

Section 614.4000

Section 614.4000 of existing regulations, which states the responsibility of Farm Credit institutions and the FCA for a credit system responsive to the credit needs of all eligible, creditworthy applicants, was proposed to be amended to substitute "banks and associations" for "Farm Credit System." Such an amendment was needed to reflect the fact that the term "Farm Credit System" now includes the Federal Agricultural Mortgage Corporation (Farmer Mac) and the Farm Credit System Financial Assistance Corporation (FAC), neither of which is a direct lender subject to the provisions of part 614. Upon review, the FCA has concluded that the section has no substantive legal effect, and its

provisions have been deleted in the final regulation.

Section 614.4030(a)

Section 614.4030(a) of existing regulations, which sets forth requirements for bank policies governing assocation lending was proposed to be amended to reflect the 1987 Act restructuring and to require bank policies and procedures governing the extension of credit to direct lender associations to include lending and financial standards for the associations.

The FCCA, an FCB, and an individual respondent expressed concern that the proposed requirement to include lending and financial standards for these institutions in the policies and procedures may be limiting in that they appear to require absolute rather than minimum standards. The respondents also suggested language reflecting a FCB's or ACB's ability to impose restrictions upon the lending activity of institutions if funds that are not Farm Credit institutions (OFIs) similar to those it is empowered to impose upon the Farm Credit associations.

In the final regulation the provisions of § 614.4030 of the existing regulation relating to FLBAs are incorporated and restated in § 614.4100, and the provisions relating to direct lender associations and OFIs are incorporated and restated in § 614.4120. In response to the comments, § 614.4120 of the final regulations clarifies that the FCB is required to set minimum, not absolute, financial standards for the lenders it funds. Also, the language of § 614.4120 of the final regulation is clarified to reflect that the FCB can impose restrictions on the statutory lending activity of institutions it funds that do not demonstrate the ability to extend and administer credit soundly, including OFIs, by restricting funding of such activity.

Section 614.4040

Section 614.4040 of existing regulations was not proposed to be amended. However, respondents suggested that § 614.4040 be amended to conform to proposed changes to § 614.4030 requiring associations to develop their own operating guidelines, rather than relying on bank guidelines. In the final regulation existing § 614.4040 is redesignated as § 614.4145 and relocated to subpart C without substantive change to its provisions. The FCA will consider the comment in the context of its proposal on bank/association relationships.

Section 614.4050

Section 614.4050 of existing regulations, which addresses bank supervision of associations, was proposed to be amended to delete existing provisions and to add a requirement for direct lender associations and their funding banks to enter into a written financing agreement meeting certain requirements. Under the proposal, the amended § 614.4050 would have replaced the requirement of § 614.4190(d) for FCA prior approval of general financing agreements, which was proposed to be deleted.

Most respondents supported the deletion of the prior approval requirement. However, the FCCA and two FCBs objected to the deletion of the reference in the section to the supervisory role of the bank with respect to the associations it funds, citing statutory references to such a role. After considering the comments and reflecting further upon the proposal, the FCA has decided to withdraw the proposed amendment to existing § 614.4050 published in 53 FR 44438 for further study. In the final regulation the provisions of existing § 614.4050 are redesignated as § 614.4135. The FCA intends to address this issue in greater detail in a separate regulatory proposal that will also respond to the suggested amendment of § 614.4040 of existing regulations (redesignated in the final regulation as § 614.4145.)

Section 614.4051

Section 614.4051 of existing regulations, which addresses Federal land bank and Federal intermediate credit bank credit reviews of association loans, was proposed to be removed and reserved. This section provided guidance for the bank's examination of associations pursuant to delegated authority from the Farm Credit Administration. The legal basis for the delegation was removed by the 1985 Amendments to the Act and this section is no longer needed. Accordingly, the final regulation removes § 614.4051. However, the FCA believes that an internal credit review by an institution of its own loan portfolio and portfolios serving as collateral for lines of credit is an essential part of effective internal controls and has included a reference thereto in part 618. (See discussion under part 618 below.)

Section 614.4060

Section 614.4060, which addresses association responsibilities, was proposed to be redesignated as § 614.4065 and amended to reflect changes made by the 1987 Act, including the potential for the transfer of long-term lending authority to FLBAs and ACAs. No comments were received on these proposed changes. In the final regulation, the provisions of existing § 614.4060 are relocated to subpart C and redesignated as § 614.4140, but the proposed amendment of the provisions is not adopted. This section will be reviewed at a later time, along with the rest of subpart C, when the FCA addresses the bank/association lending and supervisory relationships. A new § 614.4060 was proposed to be added to reflect the authority of a FCB under section 7.6 of the Act (added by the 1987 Act) to transfer long-term real estate lending authorities to a FLBA for its territory. Upon such a transfer, the association becomes a direct lender funded by the FCB in a manner similar to PCAs. No comments were received on this proposal and the proposed § 614.4060 is adopted in the final regulation as § 614.4110 of subpart C with technical and clarifying changes, including the incorporation of the term "Federal land credit associations (FLCAs)" the name given to FLBAs to which long-term lending authority has been transferred.

Subpart B—Chartered Territories

Section 614.4070

Section 614.4070 of existing regulations, which addresses loans made outside the chartered territory, was proposed to be amended to reflect the restructuring resulting from the 1987 Act and the emphasis on greater association autonomy in the 1987 Act and its legislative history. Paragraph (b) of existing § 614.4070 permits a bank or association to lend to a borrower whose operations are conducted partially within and partially outside the lending association's chartered territory only with the concurrence of supervisory banks responsible for the territories in which the borrower's operations are conducted. The proposed regulation would have required the institution to obtain the consent of all Farm Credit institutions chartered to provide similar credit in the territories in which the borrower's operations are conducted. In addition, the proposed amendment would have limited the requirement for FCA approval of policies for making loans to finance operations conducted entirely outside the institution's chartered territory to those policies that would permit the institution to finance more than 5 percent of existing loan volume in another institution's territory. Finally, the proposed regulation added a requirement that out-of-territory loans

be identified and the number and volume of such loans be monitored by banks and associations.

The FCCA, an FCB, an ACA and an individual respondent expressed concern that the requirement for concurrence by all Farm Credit institutions that are authorized to extend similar types of credit in the territory in which the borrower's operations are conducted was unduly restrictive and burdensome, and suggested that only the concurrence of Farm Credit institutions with similar authorities serving the territory be required. One respondent suggested that concurrence only be required when the collateral supporting a loan is located in another institution's territory and that only notice be required if the borrower is headquartered in the lending institution's territory. In addition, respondents questioned the FCA's statutory authority to impose any FCA prior approval requirement at all on policies governing the volume of business that a Farm Credit institution can conduct in another institution's territory. Respondents also expressed concern that the 5-percent definition of "significant shift" in this regulation might become a standard to be used by the FCA in measuring "significant" and "substantial" as they are used in other parts of the regulations. One respondent expressed concern that the monitoring requirement would be unduly burdensome to Farm Credit institutions and would increase the cost of service to the members.

FCA response. The authority of the FCA to charter institutions with assigned territories is well established. Since institutions are only chartered to lend within an assigned territory, regulations permitting out-of-territory lending give the necessary legal sanction to what would otherwise be an *ultra vires* act. Since the FCA can grant charters that authorize lending within a defined geographic area, the FCA clearly has the authority to protect the territorial integrity of the charters it issues. In the absence of these out-of-territory lending regulations, no institution would be authorized to lend outside its chartered territory. The proposed regulations would merely have established limits on how an institution can engage in such extra-territorial lending. Furthermore, out-of-territory lending can constitute a safety and soundness concern to the extent the lender is not familiar with local practices and market and economic conditions in other territories. The requirement for FCA prior approval of policies allowing greater than 5 percent of an institution's loan volume to be in another institution's territory was proposed in furtherance of the FCA's regulatory interests in lieu of setting a regulatory ceiling on out-of-territory lending. The FCA's general authority under § 5.17(a)(9) of the Act to adopt regulations necessary or appropriate to carry out the Act provides adequate legal authority for the imposition of such a requirement.

Nevertheless, upon further consideration, the FCA has concluded that the requirements for concurrence of other Farm Credit lenders in whose territory the borrower's operation is conducted will act as a control on the amount of out-of-territory lending an institution engages in and that the safety and soundness aspects can be monitored in the course of the examination process, perhaps even more effectively than by requiring approval of policies. Consequently, the final regulation deletes the proposed requirement for FCA prior approval of policies allowing greater than 5 percent of an institution's loan volume to be in another institution's territory. However, the FCA will review the institutions out-of-territory lending policies and practices in the course of its examination.

The final regulation retains the proposed concurrence requirement with some modification. It has long been the position of the FCA that a Farm Credit institution seeking to provide lending services to borrowers outside of the institution's territory should coordinate such activities with the other Farm Credit institutions offering similar credit services in whose territory the loan is to be made. Previously, regulatory language requiring such coordination between "like" institutions was sufficient to achieve this result. The proposed amendment of § 614.4070 is needed to take into account the new entities authorized under the Act; ACAs and FLCAs are corporate entities that were not envisioned when the existing regulation was drafted.

The FCA adopted the suggestion that notice only be required if the borrower is headquartered in the lending institution's territory. However, the FCA did not incorporate in the final regulation the suggestion that concurrence be required only when the collateral supporting a loan is located in another institution's territory. The final regulation requires the concurrence of all Farm Credit institutions offering similar credit services in the territory in which the operation being financed is located when the borrower's headquarters are located outside the lending institution's territory.

With regard to the alleged burden of monitoring out-of-territory lending, it should be noted that the regulation merely requires these loans to be identified and the volume monitored. The FCA regards the required monitoring as a minimal burden and believes that the lending institution should be monitoring the volume of out-of-territory loans and reporting these numbers to its board anyway as a part of its internal controls.

Section 614.4080

Section 614.4080 of existing regulations, which addresses out-of-territory lending by BCs, was proposed to be revised to reflect the fact that all BCs now operate under national charters as a result of the creation of the NBC and by operation of section 413 of the 1987 Act. In the final regulation, this section is amended to reflect that BCs can lend to eligible domestic parties domiciled anywhere in the United States or its territories and to eligible foreign parties without regard to domicile.

Subpart C—Lending Authorities

Subpart C of existing regulations sets forth the lending authorities of Farm Credit direct lenders in existence prior to the 1987 Act: FLBs, FICBs, PCAs and BCs. The proposed regulations would have combined the requirements for loan terms and conditions in subpart E and security requirements in subpart F with the lending authorities of each type of direct lender. In each of the proposed lending authorities sections, the proposed regulation added a requirement for a loan agreement, a requirement to obtain annual financial statements from borrowers, and a requirement for a notice of approval setting forth terms and conditions of the loan. In the proposed regulation, the lending authorities of the various Farm Credit direct lenders were set forth in proposed subpart D in the following proposed sections:

§ 614.4170—Farm Credit Banks.
§ 614.4180—Agricultural credit banks.
§ 614.4190—Federal land bank associations to which direct lending authority has been transferred (Federal land credit associations).
§ 614.4200—Production credit associations.
§ 614.4205—Agricultural credit associations.
§ 614.4210—Banks for cooperatives.

Sections 614.4090, 614.4100, 614.4110, 614.4120, and 614.4130 of subpart C were proposed to be removed.

In the final regulation the lending authorities are set forth in subpart A separately from required loan terms and

conditions and security requirements, which are set forth in subpart E by type of loan. Cross references to appropriate sections of subpart E are included in the lending authority sections for institutions authorized to make such loans. Lending authorities of the various Farm Credit System direct lenders are set forth in the final regulation in the following sections of subpart A:

§ 614.4000—Farm Credit Banks.
§ 614.4010—Agricultural credit banks.
§ 614.4020—Banks for cooperatives.
§ 614.4030—Federal land credit associations.
§ 614.4040—Production credit associations.
§ 614.4050—Agricultural credit associations.

In the final regulations, § 614.4090 is removed and §§ 614.4100, 614.4120, and 614.4130 are revised in the revision of subpart C. The provisions of existing § 614.4120(b) setting forth conditions for financing leased equipment and facilities (set forth in § 614.4210 of the proposed regulation) are set forth in the final regulation as § 614.4232, "Loans to domestic lessors."

Comments on lending authorities. The FCA received comments from the FCCA, three FCBs, nine Farm Credit service centers, and one individual regarding proposed revisions to the lending authority sections of part 614, subpart D of the regulations (§§ 614.4170 through 614.4210 in the November 3, 1988, proposal). Most of the respondents were concerned with the effect that the costs associated with expanded financial reporting and loan agreement requirements of the proposed regulations would have on their operations. The respondents also objected to the requirement for a formal notice of approval and the application of the loan-to-value restrictions for long-term real estate mortgage loans during the life of the loan. Comments were also received on existing § 614.4120(b) relative to the conditions for lending to domestic lessors to finance equipment or facilities leased to eligible cooperatives. These comments and the FCA response are discussed under "Subpart E—Loan Terms and Conditions" below.

A number of technical comments and request for clarification were received on the sections of the proposed regulation setting forth the lending authorities of the various institutions. In addition, respondents requested clarification of the meaning of the term "continuing commitment" as it was used in setting forth authorities of long-term real estate lenders. A number of respondents requested that proposed § 614.4210, which sets forth BC lending authorities, be revised to clarify that the BC is authorized to lend to certain entities that are not cooperatives. One respondent suggested that the term "eligible cooperative" be substituted for "voting stockholder" in the description of international lending authorities.

FCA Response. In the final regulations, the FCA incorporated technical suggestions of the respondents when they contributed to clarity. The lending authorities are set forth completely for each institution with cross references to other sections of the regulations applicable to each authority. Variances in language describing applicable loan terms and conditions have been eliminated in the final regulation by setting forth loan terms and conditions by type of loan in subpart E and including appropriate cross-references in the lending authorities of those institutions authorized to make such loans. FLBAs to which long-term real estate lending authorities have been transferred are designated as Federal land credit associations (FLCAs) in the final regulation.

The final regulation clarifies that ACAs are authorized to make real estate loans for terms of up to 40 years, provided that any such loan with a term of 10 years or more is secured by a first lien interest in real estate security. Real estate loans with terms of less than 10 years are not required to be secured by a first lien interest in real estate. Thus, the final regulation reconciles the authorities of the constituent associations to give the ACA the broadest possible powers.

The term "continuing commitment" is a statutory term which is interpreted by the FCA to include a commitment to make new advances when a loan is paid down in the amount of the repaid portion, on the same terms and conditions as the original advance. Although the proposed regulation included other eligible entities within the term "eligible cooperative," the final regulation does not. The final regulation makes specific reference to "other eligible entities" where such entities are intended to be included. This distinction is necessary because it appears that such entities are not eligible to be voting stockholders and are eligible to borrow only under section 3.7(a) of the Act and not under section 3.7(b).

Subpart D—General Loan Policies for Banks and Associations

Section 614.4140

Section 614.4140 of existing regulations, which sets forth the requirements for a sound loan, is redesignated in the final regulation as § 614.4150, but is otherwise unchanged.

Section 614.4150

Section 614.4150 of existing regulations, which sets forth factors pertinent to a sound credit decision, was proposed to be amended by revising the introductory text to require policies and procedures governing the evaluation of credit factors. Minor amendments were proposed to paragraph (c) of this section to require cash flow projections to reflect "reasonably expected cash flow generation" rather than "cash generation" and to add a requirement to meet all obligations from the cash flow "on a timely basis." Minor changes in wording were proposed to paragraph (e), having no substantive effect.

The FCCA, a FCB, and an individual respondent expressed concern with the provisions of the proposed regulation relating to repayment capacity (§ 614.4150(c)) and collateral (§ 614.4150(e)). The respondents asserted that the discussion of repayment capacity was too narrowly focused on cash flow, which may be transitory (because of government payments of various kinds or because they result from a sale of assets) or may be illusory (as a result of a particular borrower's accounting practices). Respondents suggested that while cash flow should be considered in the credit decision, past repayment history and profitability have a much higher correlation to successful repayment. FCCA noted that the deletion of the word "generally" in the statement that cash flow must be sufficient to meet all obligations and contingencies would deprive Farm Credit institutions of the flexibility needed to finance young, beginning and small farmers and start-up operations, which may have negative or inadequate cash flow in the early years but have considerable strength. The FCCA suggested adding a statement to paragraph (c) that would allow the depth and nature of the analysis to be adjusted to the size and risk characteristics of the borrower.

The respondents commenting on the collateral criterion described in § 614.4150(e) asserted that the concept expressed in the existing regulation—that collateral functions as a control of equity and repayment of debt—is one that courts are increasingly finding against public policy in lender liability suits. One respondent asserted that this language would make it difficult to develop credit policies that both comply with the regulation and do not create litigation opportunities. This respondent suggested that the need for collateral

and the type of collateral varies with the type and maturity of the loans and suggested more generally that the absolutes of the various credit factors are less important than their relativity in evaluating the strengths and weakness of particular borrowers. Alternate wording was suggested for these sections.

FCA response. After considering the comments on credit factors, the FCA has concluded that its regulatory purposes are sufficiently served by merely setting forth the areas that must be analyzed and has amended the regulation accordingly. This will allow institutions to have more flexibility in developing policies tailored to local needs; to vary the emphasis on the various credit factors to suit the particular enterprises they are financing; and to accommodate the financing of young, beginning and small farmers and start-up operations.

Section 614.4160

Section 614.4160 of existing regulations, which addresses the scope of financing based upon lending objectives, was proposed to be amended to reflect the 1987 Act restructuring provisions and to make minor technical adjustments in paragraph (c). The proposed amendment of § 614.4160 of existing regulations is adopted as proposed with minor changes, relocated to part 613 and designated as § 613.3005. *See* discussion of changes under part 613.

Section 614.4165

Section 614.4165 of existing regulations, which addresses the specialized credit needs of young, beginning, and small farmers and specialized enterprises, was proposed to be amended by removing paragraph (f), which requires FCA approval of policies governing lending to such borrowers, and by revising the introductory text of paragraph (c) and paragraph (d) to eliminate the reference to district boards and to reflect new types of institutions resulting from the restructuring provisions of the 1987 Act.

No comments were received on these proposed changes, but several respondents recommended that paragraph (b)(3) of this section of the existing regulation be amended to define "small" in terms of the amount of the farmer's sales and assets, which might be prescribed by the FCA from time to time, rather than in terms of the amount of the farmer's sales and net worth. The final regulation does not make the suggested change. The definition of "small" was designed to be consistent with data categories of the U.S. Census Bureau, and although respondents' arguments may have merit, the FCA believes the change should not be made without inviting comment on the benefits of such consistency and other ramifications of such a change. In the final regulation, the proposed amendment of § 614.4165 is adopted as proposed, except that paragraph (c) is clarified to apply only to associations that are direct lenders.

Section 614.4170

Section 614.4170 of existing regulations, which addresses borrower liability, was proposed to be removed from subpart C and a new § 614.4170 was proposed to be added to subpart D to set forth the lending authorities of FCBs. The final regulation removes and reserves § 614.4170 in subpart C.

Subpart E—Loan Terms and Conditions

Section 614.4180

Section 614.4180 of existing regulations, which sets forth required loan terms and conditions for FLBs, was proposed to be revised to set forth the lending authorities of ACBs. The provisions of existing § 614.4180 (a) and (b) were proposed to be combined with the lending authorities of the FCBs and ACBs in proposed §§ 614.4170 and 614.4180 respectively. The provisions of § 614.4180(c) of existing regulations were proposed to be deleted.

In the final regulation, the substance of paragraphs (a) and (b) of existing § 614.4180 are set forth in § 614.4210 for all lenders having long-term real estate mortgage lending authority, and revised as discussed below under § 614.4210 in response to public comments. Section 614.4180 is removed in the revision of subpart E in the final regulation.

Section 614.4190

Section 614.4190 of existing regulations, which sets forth the required terms and conditions for FICB lending, was proposed to be revised to set forth the lending authorities of FLCAs. The effect of the proposed amendment would have been to delete the provisions of existing § 614.4190, including paragraph (c) of § 614.4190, which addresses the limitation on direct lending to associations, and paragraph (d) of § 614.4190, which addresses the general financing agreement between the FICB and the institutions it funded. FCA does not adopt the proposal to delete the provisions of paragraphs (c) and (d) of § 614.4190, but redesignates these paragraphs as paragraphs (a) and (b), respectively, of § 614.4130, makes appropriate nomenclature changes, and deletes a reference in existing § 614.4190(c) to obsolete examination categories. In the final regulation, a reference to "performing" loans is substituted for the words "acceptable and problem," reflecting the guidance contained in FCA's bookletter of April 23, 1987, regarding interpretation of the FCA's direct loan limitation regulation. The FCA notes that the terminology of this bookletter will continue to provide useful guidance pending consideration of a separate proposal to amend sections of the subpart C regulation to address the bank/association lending relationship, which will be forthcoming in the near future. Section 614.4190 is removed in the revision of subpart E in the final regulation.

Section 614.4200

Section 614.4200 of existing regulations, which sets forth required loan terms and conditions for PCA loans, was proposed to be revised by combining its provisions with the lending authorities of PCAs. A new § 614.4205 was proposed to be added to set forth similar provisions for ACAs. In the final regulation, the substance of paragraphs (a), (b), and (c) of existing § 614.4200 are incorporated in § 614.4220 of subpart E, which addresses required terms and conditions for short- and intermediate-term loans that PCAs and ACAs are authorized to make. The substance of § 614.4200(d) of existing regulations, which relates to loans with maturities of up to 15 years that PCAs and ACAs are authorized to make to aquatic producers and harvesters for capital items is relocated to §§ 614.4040 and 614.4050.

In the final regulation, § 614.4200 is amended to set forth general requirements for loans made under the Act and is cross-referenced in the various sections of the final regulation setting forth the lending authorities of Farm Credit banks and associations. These general requirements include the requirements for all Farm Credit institutions that are direct lenders to use a written loan agreement and a notice of approval, and a requirement for all Farm Credit institutions operating under title I or II of the Act to obtain annual borrower financial statements. The comments received on the proposed requirements and the revisions made in response thereto are discussed below.

Loan Agreement. The lending sections of the proposed regulation setting forth the lending authorities of the various institutions would have required a loan agreement that would set forth the terms and conditions of the loan in greater detail than is commonly done in a promissory note. The proposal contemplated that the loan agreement

would, among other things, provide the lender with an enforceable right to obtain required financial and loan-related information from the borrower.

The FCCA, two FCBs, eight service centers and one individual commented on the requirement for a formal written loan agreement on long-term real estate mortgage loans. Most respondents agreed that such a requirement was appropriate on large, complex, or high-risk loans, but opposed its use on small, low-risk loans. Many respondents stated that such a requirement would place Farm Credit institutions at a competitive disadvantage since formal loan agreements are seldom used by commercial lenders for small agricultural loans. An FCB and an individual respondent commented that the loan agreement presents an additional element of risk because of the potential for error in the preparation of an additional loan document. Three service centers commented that the definition of formal written loan agreement was not clear. The FCCA and three service centers asserted that a loan agreement should not be required but should be a matter of management discretion. The FCCA questioned the FCA's statutory authority to impose such a requirement. The FCCA and two FCBs favored retaining the requirement of existing § 614.4180 for a loan agreement to be used "where appropriate."

FCA response. The FCA views its authority under section 5.17(a) (9) and (10) of the Act as a sufficient legal basis for requiring minimum criteria for loan contracts when such criteria are necessary or appropriate for safe and sound lending operations. The FCA considers a formal written loan agreement to be a key document in establishing the terms and conditions under which a loan is made and in providing appropriate mechanisms to enforce compliance with the terms and conditions of the loan. Hence, the FCA regards the requirement for a loan agreement as an appropriate safety and soundness requirement. However, the FCA agrees that the form and content of the loan agreement are matters for management discretion, provided the terms are set forth with sufficient specificity to provide a clear understanding between borrower and lender and adequate proof of indebtedness. Therefore, the final regulation retains the proposed requirement for a loan agreement, but leaves the determination of the form and content to the institution, which allows the terms and conditions to be adjusted according to the size, complexity and risk of the loan. As size, complexity, and risk increase, the form and content of the loan agreement should become more detailed and comprehensive. Depending on these variables, the form of the loan agreement may range in complexity from a brief statement of loan terms to a more formal loan document. In all cases the loan agreement should include provisions that will enable the lender to obtain adequate financial disclosure and documentation to meet regulatory requirements and to ensure prudent loan servicing.

Notice of approval. Several respondents commented on the provisions of proposed § 614.4170 requiring a notice of approval that sets out the terms and conditions of a long-term real estate loan. Several respondents opposed the requirement for a notice of approval on short- and intermediate-term loans of the type made by PCAs. One respondent noted that so little time normally elapses between the PCA loan approval and disbursement of loan funds that such a requirement would add a needless operating cost. Another commented on the absence of any clear definition of what constitutes a notice of approval. The FCCA questioned the FCA's statutory authority to impose such a requirement, noting that section 4.13B of the Act, which requires prompt written notice of action taken on a loan, does not require terms and conditions to be set forth in the notification.

FCA response. The FCA relies upon section 5.17(a)(9) of the Act for statutory authority to impose a requirement that the terms and conditions on which credit will be extended be set forth in the notice of approval. Section 4.13B of the Act requires prompt written notice of action taken on a loan and, if the application is denied or the amount reduced, the notice must state the reason for the action and inform the applicant of his or her right to a review of the action under the Act. Although this statutory notice is directed at ensuring that the review rights granted by the Act can be exercised in a timely and meaningful way, the FCA considers this notice to be the appropriate vehicle for communicating to the borrower the terms and conditions under which the institution is willing to extend credit, to allow the borrower to make meaningful judgment on whether to incur indebtedness on the terms offered. In addition to providing disclosure to the borrower and ensuring that the institution has adequate documentation that such disclosure has been made, the notice of approval will serve to minimize the likelihood that defaults will occur because of misunderstandings of the terms on which credit is extended and will minimize losses arising from inability to prove indebtedness. The FCA regards these matters as appropriate safety and soundness concerns.

The FCA recognizes that in some cases there is not enough time between the approval of a short-term operating loan and disbursement of funds to make a formal notice of approval setting forth terms and conditions of the loan useful. The requirement was proposed to address those situations in which there is some delay between the notification of action on an application and the loan closing because there are certain actions that need to be taken by the borrower or the lender before the loan can be closed. In cases where the loan closing occurs soon after the borrower is notified, a notice of approval setting forth loan terms and conditions may not be needed, as the terms and conditions are set forth in the loan agreement the borrower will be asked to sign at closing. However, where there is a lapse of time between the approval and the closing and especially where there are actions to be taken by the borrower or the institution prior to closing, setting forth the terms and conditions will prevent the parties from taking needless actions if the terms are not acceptable to the borrower. The final regulation clarifies this point by requiring the notice of approval required by section 4.13B of the Act to set forth loan terms and conditions only in cases in which the loan closing is to occur more than 15 days subsequent to the date the notification of the approval is sent or provided to the borrower.

The FCA also recognizes that the form and content of the notice may need to be varied according to the size, complexity and risks inherent in particular types of loans, and the final regulation leaves the determination of the form and content of the notice to the institution. The requirement may be met by enclosing a copy of the loan agreement the borrower will be expected to sign or by summarizing material terms of the agreement. The requirement may also be met by an adverse action notice required under Federal Reserve Regulation B when credit is granted on different terms or in different amounts than that requested, provided the adverse action notice sets forth the terms and conditions with sufficient specificity to reflect the material terms of the loan agreement. Interest rate disclosures required by subpart K of part 614 may be combined with the notice of approval disclosures.

Annual Financial Statements. On August 5, 1986, the FCA Board adopted a policy statement on loan documentation that set forth the FCA's expectations concerning the type of financial information Farm Credit institutions should obtain to provide an adequate basis for a prudent lending decision and to facilitate FCA examinations. *See* FCA Bookletter of August 18, 1986. The policy stated that obtaining current borrower financial information when the loan is made, when any significant loan administration action is taken and at the close of the borrower's fiscal year is critical to sound loan underwriting and servicing. The policy also stated that loan agreements should clearly establish the institution's right to obtain annual borrower-attested statements, independently audited where appropriate. The policy stated that the FCA would expect institutions to develop and implement a plan for strengthening loan documentation by yearend 1987 that would establish the right of the institution to obtain a verified balance sheet and income statement from all borrowers at least annually and would require annual verified balance sheets and income statements for all loans over $100,000 and for all loans secured by production or storage facilities constituting more than 25 percent of the total collateral value. The policy further stated that failure to develop and implement such plans would be considered an unsafe and unsound practice by FCA examiners.

A subsequent clarification issued by the FCA Board stated that annual financial information is not considered critical for consumer-related, rural housing and other such loans repayable through regular and frequent payments, but is considered critical for loans financing profit-generating enterprises where loan repayment is largely dependent on the enterprise financed. The clarification further stated that for the latter loans, such requirements should be waived or limited only where adequate information to properly manage risk is available, such as lender agreements to share borrower financial information. The subsequent bookletter also stated that when an institution does not have the right to obtain annual financial information on performing loans made before the issuance of the Board policy, it should seek to obtain it by conditioning any loan servicing action that benefits the borrower on the institution's obtaining the right to obtain borrower financial information as needed in the future. The clarification also suggested that institutions utilizing a differential pricing program related to risk should consider borrower financial statements a necessary pricing tool. *See* FCA Bookletter 090–OB, August 20, 1987.

Subsequently, Congress responded to the same concern addressed in the policy statement by enacting in the 1987 Act a requirement that each FCB require a financial statement from each borrower with a long-term real estate mortgage loan at least once every 3 years, but authorized the FCA to establish by regulation shorter intervals at which such statements must be required. *See* section 1.10(a)(5) of the Act, as amended. The proposed regulations would require all institutions making loans under titles I and II of the 1971 Act, as amended, to obtain, as a condition precedent to making a loan, an enforceable right to obtain a verifiable balance sheet and income statement from the borrower. The proposed regulation would also require such institutions to develop a policy requiring a verifiable balance sheet and income statement to be obtained from each borrower annually, except for loans with regularly and frequently scheduled payments such as rural housing, consumer-related and other similar types of amortizing loans, as well as loans made under district minimum information programs.

Many respondents acknowledged that the proposed regulations incorporated most of the substance from FCA bookletters dated August 18, 1986, and August 20, 1987, in which the FCA Board encouraged Farm Credit banks and associations to impose such requirements. The FCCA asserted that Farm Credit institutions would view the regulations as superseding any previous bookletters on the subject. However, most respondents objected to the requirement that a balance sheet and income statement be obtained annually. The FCCA, a FCB, four service centers and an individual respondent expressed concern that the competitive position of Farm Credit institutions would be severely harmed by this requirement. A FCB asserted that the requirement is inconsistent with congressional policy reflected in borrower rights provisions of the 1987 Act. Many respondents asserted that the legal right of the institution to such information from existing borrowers is uncertain.

The FCCA and several service centers agreed that financial information is important to the lending decision, but requested that institutions be allowed complete discretion in the amount and degree of information gathered. The FCCA, several FCBs, several service centers in one district, one association and one individual respondent objected to the requirement for long-term real estate mortgage loans. The FCCA and three service centers asserted that Farm Credit institutions should be allowed to make small and low-risk loans which do not present a material risk to the institution in the aggregate without full balance sheet and income information from the borrower. Three service centers generally supported the practice of requiring such information, but asserted that certain small loans which would pose little risk through the absence of such information should be exempted from this requirement.

Several comments were received on the verification requirement. One service center suggested that verification should not be necessary when the borrower has an established history of performance. The FCCA asserted that the FCA's imposition of the proposed requirement is not well supported by the statute, noting the absence of any specific reference in the Act to verification or to obtaining such statements as a "condition precedent" to making the loan. An FCB and an individual respondent suggested that the borrower should also be required to certify the financial statements as true and correct.

The FCCA asserted that Farm Credit institutions would have no legal right to require such information with respect to outstanding loans and commitments where borrowers are current on their payments and suggested that the requirements would have an adverse public relations impact, since most competitors do not have similar requirements for their customers. An FCB and an individual respondent viewed the proposed provision as an attempt by the FCA to implement uniform criteria for the diversified portfolios of the Farm Credit institutions. An FDB observed that most lenders require periodic financial statements only on larger commercial or business loans and not on small commercial loans and residential mortgage loans. The FCB further suggested that the degree of credit risk should be the criterion for setting differential requirements for financial information and that such requirements should be set forth in board policy statements. The FCCA noted that proposed regulations governing credit standards for the sale of loans to a certified agricultural mortgage marketing facility had no such requirement.

Farm Credit institutions were especially opposed to the requirement

for an annual balance sheet and income statement for short- and intermediate-term loans. The FCCA asserted that there is no statutory basis for this requirement, and six service centers and an FCB objected to the requirement for such loans contained in the proposed regulation. Another FCB alleged that there are apparent inconsistencies between the annual financial statement requirements for short- and intermediate-term loans, and long-term real estate mortgage loans. It suggested that the language used in the proposed regulations covering ACAs making short- and intermediate-term loans be used also for long-term real estate mortgage loans.

FCA response. The FCA considers the commitment of a loan without sufficient financial information to assess the borrower's creditworthiness (especially his or her ability to repay from primary sources) to be imprudent. Annual or more frequent borrower financial information is needed by the institution to monitor the risk in its loan portfolio, especially when the primary source of repayment is the operation being financed, whether the loan is a long-term loan or a short-term loan. The minimum components of financial information are a balance sheet and income statement that accurately reflect the borrower's financial condition in sufficient detail to allow the lending institution to verify the reliability of the information furnished by the borrower. The FCA regards the requirement for annual financial statements to be an appropriate safety and soundness concern and relies on its authority under 5.17(a)(9) of the Act for legal authority to impose such a requirement for short- and intermediate-term loans. The FCA does not believe that requiring sufficient financial information for sound credit decisions and administration is inconsistent with according borrowers their statutory rights.

The FCA recognizes that requiring, verifying, and analyzing financial information has a cost to Farm Credit institutions; however, such information is vital to an institution's ability to monitor risk in its loan portfolio and to take timely action to address risk. Moreover, the absence of such information also has a cost. Loans that are not supported by borrower financial information that is adequate for a sound credit decision and subsequent monitoring of risk are more likely to result in loss than those that are. In addition, Farm Credit institutions have historically been required to make provisions for loan losses because of the absence of such information. Although the subsequent collection of such information allowed the institutions' allowance for loan losses to be reduced, the public has tended to react to these reductions as liberal accounting policies rather than benefits gained from improved risk detection practices. Such perceptions may result in a demand for higher interest rates on System obligations.

Nevertheless, the FCA acknowledges that for certain types or sizes of loans, the cost to the institution of obtaining such information may outweigh the potential benefits. For this reason, the various lending authorities sections of the proposed regulations, as well as § 614.4200(c) of the final regulations, allow each institution's board of directors to exempt certain classes of loans from the requirement. These include loans made under a minimum information program and loans with regular and frequently scheduled payments, such as rural housing or other similar amortized consumer-type loans. Although § 614.4200(c) of the final regulation does not exempt loans from the annual financial statement on the basis of size, the FCA expects that exempted loans will be small in size, both individually and in aggregate, because of the nature of loans exempted. Section 614.4200(c) of the final regulation clarifies that the district minimum information programs that were contemplated in the proposed regulation were those with a maximum limit of $100,000 in outstanding loans and commitments per borrower.

The exemption permitted by § 614.4200(c) of the final regulation is only an exemption from the requirement to obtain annual financial information. It does not relieve the institution of the obligation to ensure that these loans meet the lending criteria defined by the institution's board at the origination of the loan or of the obligation to obtain financial information and adequately document repayment capacity before making the loan, restructuring its term, or granting forebearance. Minimum information programs and their limitations are expected to be appropriately documented.

The FCA understands that there may be no enforceable right to obtain annual financial statements for existing loans in which the institution may not have had an opportunity to acquire such a right. However, as stated in previous bookletters, Farm Credit institutions should obtain the right to obtain such information when they have an opportunity to do so, as in connection with a servicing action benefiting the borrower, and should obtain annual financial information when they do have the right.

The FCA disputes the contention of respondents that other financial institutions generally require periodic financial statements only on larger commercial loans and that Farm Credit institutions would be at a significant competitive disadvantage if required to obtain annual financial statements. The recently published Farmer Mac Securities Guide requires servicers of loans in Farmer Mac-guaranteed pools to obtain current and historical financial information and annual financial statements, as appropriate. Also, Comptroller of the Currency Robert Clarke, in a recent speech to the Independent Bankers of America, stated that a recent survey of national banks in the midwestern States revealed that all of the banks surveyed were obtaining annual balance sheets and 90 percent were obtaining annual cash flow information. Mr. Clarke took this opportunity to place the banks on notice that increased emphasis on financial reporting and analysis is going to be expected from national banks and that their performance in this area will be of considerable concern to national bank examiners. The FCA believes that its regulation is in step with industry and regulatory trends.

Therefore, the final regulation continues to require annual verifiable financial statements for all loans other than loans with regular and frequently scheduled payments and loans subject to a minimum information program with a maximum limitation of $100,000 per borrower. Although the responsibility for verifying the statements rests with the lending institution, the FCA is persuaded that requiring the borrower to certify the information to be true and correct will result in financial information of better quality and incorporates this suggestion in the final regulation.

Section 614.4210

Section 614.4210 of existing regulations sets forth required loan terms and condition for banks for cooperatives. Its provisions are redesignated and restated in §§ 614.4230 and 614.4233 in the final regulation. The final regulation revises § 614.4210 to set forth required terms and conditions and security requirements for long-term real estate mortgage loans. These requirements are set forth in existing regulations in §§ 614.4180 and 614.4230 and were incorporated in the proposed regulation, without substantive change, in the lending authority sections of the various institutions authorized to make

such loans, namely FCBs, FLCAs and ACAs.

Loan-to-value limitations for long-term real estate loans are set forth in existing regulations in § 614.4180(b). In the November 3, 1988, proposal, these provisions were incorporated virtually unchanged into the sections setting forth lending authorities of the various entities that are authorized to make such loans. In addition, the proposal included a provision allowing the FCA to reduce the maximum loan-to-value percentage to 75 percent for a particular institution whose lending and business practices are deemed to be imprudent.

Section 1.10(a)(1)(A) of the Act provides that long-term real estate mortgage loans originated under the authorities granted to FCBs under title I cannot exceed 85 percent of the appraised value of the real estate security (97 percent for government-guaranteed loans). Section 1.10(a)(1)(B) of the Act authorizes the FCA to require that loans not exceed 75 percent of the appraised value of the real estate security. Existing regulations and the proposed regulation interpret the statutory loan-to-value requirement for long-term real estate loans to apply at origination and all times during the life of the loan, but allow certain actions to be taken by the institution to protect its investment, notwithstanding the fact that such actions may cause the loan-to-value percentage to exceed the statutory limitation. A number of comments were received on the maximum loan-to-value percentage even though it was not proposed to be amended. Respondents urged the FCA to modify the statutory interpretation reflected in existing regulations, arguing that recent experience demonstrates that this interpretation is problematic in an environment of rapidly declining real estate values. The FCCA pointed out that the lender has little recourse if the value of collateral declines while a loan is outstanding. The FCCA and three service centers noted that the events of the mid-1980s led to a substantial decline in the appraised value of real estate so that the 85-percent requirement could not be maintained. The FCCA proposed some alternative wording to explicitly permit an FCB to advance operating funds to a borrower in a distressed loan situation as an alternative to eliminating the 85 percent loan-to-value requirement after loan origination.

Several respondents commented on the provision of the proposed regulation allowing the FCA to reduce the maximum loan-to-value of real estate to 75 percent for a particular institution where other than sound loan and business conditions are prevalent. The FCCA and the three service centers asserted that the FCA's use of this authority could impede the Farm Credit institution's ability to provide consistent credit to its customers, especially young or beginning farmers, if such control is not used within discretion. FCCA also pointed out that this provision was not included in proposed § 614.4205, which set forth the lending authorities for ACAs. A FCB and an individual respondent noted that the phrase "other than sound loan and business decisions" might be construed to apply to the borrower rather than the lender.

FCA response. Upon considering the comments and recent experience with dramatic declines in property values over which the borrower had little control, the FCA has concluded that the statutory purpose will be satisfied if the 85-percent limitation is applicable at loan origination and at the time any additional funds are advanced. Therefore, existing regulations are amended by the final regulations to provide that no loan may exceed 85 percent of the appraised value of security at the time the loan is made or at any time funds are advanced, whether under a binding commitment or otherwise. The FCA emphasizes, however, that the 85 percent is a maximum limitation. Individual lending decisions must take into account the borrower's circumstances and the institution's risk tolerance in determining whether it is prudent to lend up to the maximum limit allowable under the statute. The final regulation emphasizes the importance of the evaluation of the borrower's repayment capacity to the credit decision by requiring that the borrower's earnings history repayment history and net earnings projections provide assurance for repayment.

The final regulation continues to provide that, notwithstanding this limitation, funds may be advanced to pay taxes or make other expenditures necessary to protect the institution's investment. Thus, the final regulations provide long-term real estate lenders the opportunity to advance funds in a distressed loan situation when such advances will enable the lender to limit its losses on the loan to the greatest extent possible, provided an analysis considering relevant costs supports that action. However, loan agreements should include provisions allowing the lender to correct collateral deficiencies when they arise, and prudent lending practices would dictate that collateral deficiencies be addressed by the lending institution at any time servicing actions are taken that would afford the lender a legal opportunity to do so, whether or not new funds are advanced.

The final regulations continue to provide that the loan-to-value percentage may be reduced by the FCA for a particular institution that engages in unsound lending or business practices. An institution that employs prudent lending and business practices need not fear that its ability to provide consistent credit to its borrowers will be curtailed. Nor does the FCA believe that any special exemption from this provision for loans to young, beginning and small farmers or to rural home owners is warranted. There is no suggestion in the statute that Congress contemplated that loans to such persons should be based on unique credit criteria. The FCA views these provisions as requiring that credit be available to such persons on terms appropriate to their needs, but does not view these provisions as license to engage in imprudent lending or business practices. While it is possible that such a restriction may work a hardship on the institution's borrowers, including young, beginning and small farmers, the institution can remedy the situation by improving its lending and business practices. The final regulation clarifies that a lower loan-to-value percentage may be imposed by the FCA through the exercise of its enforcement powers or otherwise. The reorganization of part 614 will remedy the inadvertent omission of the ACAs from the applicability of this provision and clarify that the provision is applicable to all lenders that make long-term real estate loans.

Section 614.4210

Section 614.4210 of existing regulations, which sets forth required loan terms and conditions for banks for cooperatives, was proposed to be amended by combining with it the provisions of existing § 614.4120 setting forth the lending authorities of BCs. Similar provisions were proposed for agricultural credit banks in § 614.4180 of the November 3, 1988, proposal. Requirements for FCA prior approval of policies governing international lending under section 3.7(b) of the Act was proposed to be deleted.

In the final regulation, the provisions of existing § 614.4210 (a) and (b) relating to loans to eligible cooperatives are restated without substantive change in § 614.4230. The provisions of existing § 614.4210(c) relating to loans made under 3.7(b) (international lending authorities) are restated in § 614.4233 of

subpart E of the final regulations. Required loan terms and condition for loans to domestic lessors for the purpose of providing leased assets to eligible cooperative borrowers, which are set forth in existing regulations in § 614.4120, were also set forth in proposed § 614.4210. In the final regulation, these requirements are restated in § 614.4232, with a clarification made in response to the comment that leased equipment, such as a railroad car, should not lose its eligibility for financing if it is used to transport agricultural goods to Mexico or Canada. The existing regulation and the proposed amendment stated that such equipment must be for use only in the United States; the final regulation provides that the leased equipment must be primarily for use in the United States.

The final regulation adds a new § 614.4230 to subpart E to set forth required terms and conditions for loans made by BCs and ACBs to eligible cooperatives and other eligible entities under section 3.7(a) of the Act.

Subpart F—Security Requirements

Appraisal requirements. Section 614.4220 of subpart F of existing regulations requires primary real estate security to be valued on the basis of appraised value and requires primary chattel and additional security to be valued on the basis of recovery value. Appraised value is defined as reasonably supported market value, which is defined as the amount a property will bring if a reasonable time is allowed to find a purchaser and if both seller and prospective buyer are fully informed and not under abnormal pressure. Methods of appraisal are not addressed in existing regulations. The November 3, 1988, proposal would have required Farm Credit banks and associations to develop a more structured and uniform collateral appraisal process that would be independent of the lending decision and that would utilize several methods for determining appraised value. The use of recovery value as a method of evaluating additional collateral, chattels, and other personal property would have been replaced by appraised value. Section 614.4261 of existing regulations, which addresses the security and appraisal standards for BCs, was proposed to be eliminated and replaced with the appraisal requirements applicable to other Farm Credit institutions.

The FCA received 32 comments on various aspects of the proposed appraisal regulation. Among these were comments from the FCCA, CBC, two BCs and an individual expressing concern that the BCs would be subject to the proposed appraisal requirements. These respondents argued that the BC credits are commercial in nature and that the appraisal requirements should distinguish between such loans and loans made by other Farm Credit institutions. The majority of these respondents favored retaining the existing language of § 614.4261 with only minor changes for BCs.

While these comments were under review, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Title XI of FIRREA established new appraisal requirements for all "Federally related" mortgage loans. Although loans from Farm Credit institutions do not fall within the definition of "Federally related" loans, the FCA has determined that the FIRREA appraisal provisions and regulations adopted by Federal regulatory agencies thereunder should be reviewed prior to the adoption of final appraisal regulations. Therefore, the FCA hereby withdraws the November 3, 1988, proposal to amend the provisions of §§ 614.4220 and 614.4261 of subpart F, but redesignates § 614.4220 as 614.4240 in the final regulation. The FCA will propose new appraisal regulations in the near future. In the final regulation, subpart F is retitled "Appraisal Requirements."

Sections 614.4230, 614.4240, 614.4250, 614.4260 and 614.4261

Sections 614.4230, 614.4240, 614.4250, 614.4260 and 614.4261 of existing subpart F set forth security requirements for loans by type of institution and valuation requirements for all Farm Credit institutions. In the November 3, 1988, proposal, §§ 614.4230, 614.4240, 614.4250 and 614.4261 were proposed to be removed. The substance of these provisions was proposed to be incorporated in the sections setting forth the lending authorities of the various types of institutions of the Farm Credit System.

In the final regulation, security requirements for the various institutions are incorporated in the provisions of subpart E setting forth required loan terms and conditions by types of loans rather than by types of institutions. Existing § 614.4220 is redesignated as § 614.4240 in the final regulation and a new § 614.4220 is added to subpart E setting forth required terms and conditions for short- and intermediate-term loans. This new section also includes the relevant provisions of existing § 614.4250, which set forth security requirements for PCAs. No substantive change is made in the requirements, except for the deletion of references to the district board and FCA prior approval requirements and deletion of the requirement for the short-term lender to consider whether all or a portion of an applicant's credit needs might be more satisfactorily met by a real estate mortgage loan originated by an FLBA in accordance with district board policies established under § 616.6020. The deletion of the latter requirement is consistent with the deletion of part 616.

In the final regulation, the provisions of § 614.4240(b) are incorporated in § 614.4130 as paragraph (c), and the provisions of paragraphs (a) and (c) of § 614.4240 are deleted, as they are duplicative of requirements stated elsewhere in the regulations. In response to a respondent's suggestion that more specific language addressing the type of collateral required for long-term real estate mortgage loans be added to the proposed regulation, the substance of § 614.4230 of existing regulations is incorporated in the final regulation in §§ 614.4210 and 614.4220 for both long-term real estate mortgage loans and short- and intermediate-term loans. The provisions of existing § 614.4260(a) are incorporated and restated without substantive change in the final regulation in § 614.4230. Paragraph (b) of existing § 614.4260, which permits seasonal loans to be secured or unsecured is deleted as unnecessary. The provisions of existing § 614.4260(c) relating to seasonal commodity loans are set forth in the final regulation in § 614.4231. Paragraph (c) of § 614.4260 of existing regulations is restated in § 614.4231 without substantive change.

Subpart H—Loan Participations

Section 614.4330

Section 614.4330 of existing subpart H, which sets forth requirements for loan participation policies and regulatory requirements for loan participations and loan participation agreements was proposed to be amended to delete requirements for FCA prior approval of district board loan participation policies. Section 614.4334 was proposed to be amended to delete requirements for FCA prior approvals relating to loan participation agreements between banks for cooperatives and the Central Banks for Cooperatives. Amendments to reflect the restructuring possibilities under the 1987 Act were proposed to §§ 614.4331, 614.4332, 514.4333, and 614.4334, which set forth the loan participation authorities of the FLBs, FICBs, PCAs, and BCs, respectively, and new sections were proposed to be added to set forth

the participation authorities of ACBs, ACAs, and FLCAs.

Several comments of a technical nature were received. In addition, comments were received from a number of institutions suggesting additional substantive changes to the regulations. In particular, institutions objected to the existing requirement (which the FCA did not propose to change) that each participating institution make an independent credit decision on purchased loan participations.

After considering the issues raised by the comments and in consideration of the need to modify the regulation to accommodate the subordinated participation interest retained by institutions when loans are sold into the Farmer Mac program, the FCA has decided not to adopt amendments to subpart H proposed on November 3, 1988, and to repropose amendments to subpart H that will address the subordinated participation interest as well as the issues raised by the commenters. Comments received on amendments proposed to subpart H on November 3, 1988, will be addressed at that time.

Subpart J—Lending Limits

The FCA does not adopt amendments to subpart J proposed on November 3, 1988, at this time. At the time the regulations were proposed, capital regulations had not been adopted, and it was unclear how Farm Credit institutions would respond to the restructuring opportunities under the 1987 Act. Now that capital adequacy regulations have been adopted and a significant amount of restructuring has taken place, the proposed amendments may no longer be appropriate. The FCA intends to repropose in the near future amendments to the regulations in this subpart in light of these recent developments. Comments received on the proposed amendments will be considered at that time.

Subpart O—Special Lending Programs

Section 614.4525

Section 614.4525 of existing regulations, which addresses the general authorities of Farm Credit institutions to enter into special lending programs with agents, dealers, cooperatives, other lenders, and individuals to facilitate the making of eligible loans, was proposed to be amended to incorporate the provisions of the 1987 Act resulting in the restructuring, new corporate identities and revised authorities for specific Farm Credit institutions.

The only comment received was a technical one questioning whether § 614.4525 was a proper designation. Although this section was previously designated as § 614.4520, it was redesignated as § 614.4525 with the implementation of the borrower rights regulations, when § 614.4520 became part of subpart N. *See* 53 FR 35456, September 14, 1988. The designation is correct and the final regulation incorporates the proposed amendment without change.

Section 614.4530

Section 614.4530 of existing regulations, which addresses the authority of PCAs to make special-type loans on commodities covered by price support programs, was proposed to be amended to reflect the existence of ACAs and their authority to make loans under similar provisions as PCAs. There were no comments on this proposed amendment, which is adopted in the final regulation without change.

Subpart P—Federal Intermediate Credit Bank Financing of Other Financing Institutions

Technical changes were proposed to subpart P to reflect the restructuring possible under the 1987 Act, primarily substituting "Farm Credit Bank" for "Federal intermediate credit bank." Only technical comments were received and were incorporated in the final regulation where appropriate.

Subpart Q—Bank for Cooperatives Financing International Trade

Subpart Q was proposed to be amended to reflect the BC restructuring that occurred as a result of the 1987 Act and to delete FCA prior approvals of various required bank policies. In addition, amendments were proposed to § 614.4710(a)(1)(i) to change the intervals at which net worth must be computed for the purpose of determining limitations on bankers acceptances outstanding to a single borrower. Paragraph (a)(1)(i) of existing § 614.4710 requires net worth to be computed on June 30 and December 31 of each year, or on such other interim date as the FCA determines, for the purpose of determining the limitation on bankers acceptance financing outstanding at any time to any one borrower. The November 3, 1988, proposal would have substituted a requirement that net worth be calculated on an ongoing basis. Technical amendments were proposed to paragraph (c) of existing § 614.4710, which provides that discounted acceptances outstanding at any one time to any one borrower from one or more district banks and the Central Bank for Cooperatives shall not exceed 10 percent of the combined net worth of the banks for cooperatives, to delete the reference to the CBC and to substitute "net worth available to support such acceptances" for "combined net worth."

Comments were received on both proposed amendments and on paragraphs not proposed to be amended. Several respondents objected that calculating net worth on an ongoing basis would be burdensome and ill-advised and could cause some operational problems. Quarterly calculations were thought to be sufficient by respondents. In addition, respondents suggested that § 614.4710(a)(2) be revised to clarify that the exceptions of § 614.4710 are also applicable to § 614.4710(a)(2). Also, some respondents noted that the 100-percent limitation of § 614.4710(c) is not consistent with existing or pending regulatory revisions being considered by the Comptroller of the Currency for national banks. Respondents also suggested that the word "combined" may have been inadvertently deleted in the phrase "net worth available to support the acceptances" in § 614.4710(b) of the proposed amendment (§ 614.4710(c) of existing regulations). Respondents also noted that paragraph (a)(1) of existing regulations is not a complete sentence and requested clarification of its meaning.

FCA response. It is FCA's position that net worth, for the purpose of determining the limitation on bankers acceptance financing to a single borrower, should be calculated more frequently than semiannually in order for the regulatory limitation to provide an effective risk-containment tool. Under the existing regulations this problem is addressed by FCA's interim determinations. The provision for a risk containment mechanism that is sufficiently responsive to material changes in an institution's net worth to be effective avoids the need for FCA to require calculations on interim dates. The FAC regards this as a particularly important issue in view of the increased concentration of loan risk resulting from the merger of 10 BCs into the National Bank for Cooperatives. The final regulation states the expectation of the FCA in this regard more explicitly by requiring net worth to be computed on a monthly basis. Since updating the institution's financial information on a monthly basis is a prudent business practice that is consistent with the practice of other Farm Credit institutions, the FCA does not believe that montly computations of net worth will constitute an undue burden. Furthermore, the use of average daily

balances are now required to compute permanent capital ratios pursuant to § 615.5210(b) of part 615 of FCA regulations.

With respect to the request to clarify § 614.4710(a)(2), the FCA declines to incorporate the suggested wording, but confirms the respondent's understanding that paragraph (a)(2) does not in any way abrogate the exception from lending limits for rediscounted acceptances stated in the introductory text. Rather, it clarifies that rediscounted acceptances are subject to the 10-percent limit even though they do not count against the lending limit.

The final regulation § 614.4710(b) is amended in the final regulation to increase the limitation on total acceptances outstanding from 100 to 150 percent of capital stock and unimpaired surplus. When the existing FCA regulation was adopted, it mirrored the statutory limitation for Federal Reserve member banks (12 U.S.C. 372). It was and continues to be the intention of the FCA to mirror the statutory limitation and any modifications by the Federal Reserve Board permitted by the statute. Since the existing regulation was adopted, Congress has raised the statutory limitation to 150 percent. Accordingly, the final regulation makes the adjustment requested by the respondents.

As a result of considering comments on proposed § 614.4710(b) (§ 614.4710(c) of existing regulations) in light of the merger of BCs to form the NBC, the FCA has concluded that the System limitation on bankers acceptances, exclusive of the portion participated out, are redundant of the individual bank limitations, since each BC, including the NBC, is subject to the individual limitation on bankers acceptances. Since there is no longer a Central Bank for Cooperatives which was not subject to the individual limitations of paragraph (a) of § 614.4710), the System limitation would be the same as the sum of the individual limitations. Accordingly, the final regulation deletes the provisions of § 614.4710(c) of existing regulations in their entirety. However, the final regulation requires the calculation of net worth to eliminate any double counting of capital resulting from participations.

In response to the request to clarify the meaning of § 614.4710(a)(1), the FCA provides the following explanation: As originally adopted and published October 22, 1981, (46 FR 51879) the paragraph reads as follows:

> The Fiscal Agency's authority to accept drafts or bills of exchange includes the authority to accept drafts or bills of exchange drawn upon a district bank for cooperatives
> * * *

The Code of Federal Regulations (CFR) made an error in printing the regulation, deleting the text after the first "authority" up to and including the second "authority," which resulted in an incomplete sentence. In 1986, this paragraph was amended by the FCA by substituting "Funding Corporaton" for "Fiscal Agency." Since the amendment was made to the erroneous language of the CFR rather than the language actually adopted by the FCA Board and published in the **Federal Register**, the legal effect of the amendment was to adopt the erroneous language as an FCA regulation. To correct the error, the FCA Board in these final regulations amends § 614.4710(a)(1) by reinserting the deleted text. The reinserted language makes clear that the intent of the section is to authorize the issuance and holding of acceptances eligible for discount with Federal Reserve banks. The final regulation also adopts proposed technical changes to § 614.4710 to reflect BC restructuring.

Section 614.4720

Section 614.4720 of existing regulations, which addresses letters of credit, was proposed to be amended to remove FCA approval of BC board policies governing the issuance of letters of credit. Section 614.4720(a) was also proposed to be amended to require letters of credit to be written commitments. The FCCA asserted that this revision is not necessary, because the requirement that letters of credit be in writing is clearly implied in the existing regulation. However, past practices of some Farm Credit institutions suggest that such an implication was not in fact clearly understood. Consequently, the final regulation specifically requires letters of credit to be in writing.

Section 614.4800

Section 614.4800 of existing regulations, which addresses guarantees and contracts of suretyship, was proposed to be amended to remove the requirement for FCA approval of BC policies governing guarantees and contracts of suretyship. In addition, the FCA proposed to add a sentence to the regulation stating that BCs may require remuneration for guarantees and contracts of suretyship. No comments were received on this proposed amendment. The final regulation adopts the proposed deletion of the requirement for FCA approval of bank policies governing guarantees and contracts of suretyship, but does not adopt the additional statement on remuneration. It is unnecessary to authorize BCs to charge fees for guarantees, and prudent lending practices would ordinarily require it.

Section 614.4900

Section 614.4900 of existing regulations, which sets forth guidelines for foreign exchange activities of the banks for cooperatives, was proposed to be amended to remove the requirement for FCA prior approval of foreign exchange activities and to reflect BC restructuring. No comments were received on this proposed amendment, which is adopted as a final regulation.

Part 615—Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

Subpart C—Deposit of Funds

Section 615.5190

Section 615.5190 of existing regulations, which governs the deposit of funds by Farm Credit banks and associations, was proposed to be revised to reflect the new corporate entities that are possible under the 1987 Act. The FCCA objected to the use of the term "affiliated bank" rather than "supervisory bank" in the description of the association's authority to deposit funds with its funding bank. The final regulation uses the term "funding bank" rather than "affiliated bank" to describe more accurately the relationship between the bank and the associations in its district.

Section 615.5550

Section 615.5550, which addresses bankers acceptances, was proposed to be revised to remove the requirement for FCA approval of bank board policies for the delegation of authorities to bank management. No comments were received on the proposed revision and it is adopted as proposed.

Part 616—Coordination

Part 616 of existing regulations, which addresses the manner in which specified activities are to be coordinated by System institutions, was proposed to be removed and reserved, as System restructuring required by the 1987 Act has eliminated the need for it. The proposal is adopted as proposed.

Part 618—General Provisions

Subpart A—Technical Assistance and Financially Related Services

Section 618.8000

Section 618.8000 of existing regulations, which addresses financially related services that may be offered by

Farm Credit institutions, was proposed to be amended to eliminate the requirement for FCA prior approval of the board policies governing such services. However, the requirement for FCA approval of any new financially related service programs proposed to be offered within a district was not proposed for deletion.

Comments were received from the FCCA, the CBC, and several FCBs, arguing that the FCA has no statutory authority to require prior FCA approval of financially related services to be offered by Farm Credit institutions.

The FCA believes that section 5.17(a)(9) and (10) of the Act provides sufficient authority to regulate financially related services. The FCA believes that implicit in this authority is the authority to adopt a regulation that will allow the FCA to make a determination prior to the initiation of new services that such services are legally permissible and subject to appropriate regulatory controls to ensure that the safety and soundness of the institution is not impaired. Nevertheless, the FCA does not adopt the proposed amendment at this time, but intends to repropose amendments to this section. Until a revised regulatory proposal is presented, § 618.8000 remains in effect, applicable to all Farm Credit institutions proposing implementation of financially related and technical services.

Section 618.8050

Section 618.8050 of existing regulations, which sets forth the authority of Farm Credit institutions to engage in equipment leasing, was proposed to be amended to reflect the restructuring of Farm Credit institutions by stating the authority generally for all direct lenders. The final regulation adopts the proposed amendment with a clarification to reflect that leasing authorities extend to farming, aquatic, and eligible agriculturally related operations as defined in part 613 of these regulations. The clarification was made in response to a concern that the use of the terms "farming and aquatic operations" could be viewed as a restriction on the leasing authorities of a BC.

Section 618.8430

Section 618.8430 of existing regulations, which addresses internal controls, was proposed to be amended by adding a new § 618.8430(b) which would impose upon banks and associations the responsibility for adequate review and assessment of their loans and loan-related assets. This provision would replace the requirement for bank credit reviews of association loan portfolios, which was proposed to be deleted. (See discussion under "Subpart A—General Authorities" above.) The proposed amendment would require banks and associations to adopt policies for the evaluation and assessment of credit, operations, financial, and management functions. This expansion of internal controls was promulgated pursuant to FCA's general regulatory authority stated in section 5.17(a)(9) of the Act and was proposed in order to ensure that adequate controls over the lending function are maintained.

Several comments were received relating to the structuring of the regulation and the emphasis of the internal control programs. One respondent suggested that proposed § 618.8430(b) did not sufficiently emphasize the need for a review program for loans and loan-related assets. It was suggested instead that part or all of § 618.8430(b) be subsumed in previous paragraphs. One respondent also suggested that the proposed regulation should be expanded to include a reference to appraisal review requirements set forth in § 614.4220. Both respondents suggested that the FCA clarify that the regulation does not necessarily require the use of the Uniform Classification System adopted by the Federal Financial Institutions Examination Council (FFIEC).

FCA response. In the final regulation, § 618.8430(b) is revised to place more emphasis on the institutions' policy and review requirements. While the final regulation does not require the use of the FFIEC's Uniform Classification System, the FCA recommends it be used, since it is the standard upon which the FCA's examination of the institution's assets will be based.

Part 619—Definitions

Part 619 was proposed to be amended by adding definitions for terms to reflect new corporate entities created or made possible by the 1987 Act. Definitions of the terms "agricultural credit association" (association formed from the merger of an FLBA or FLCA and a PCA), "agricultural credit bank" (bank formed from the merger of an FCB and a BC), "direct lender," "association," "banks for cooperatives," and "Farm Credit System banks" were proposed to be added. The definition of "Farm Credit System institutions" was proposed to be amended to define the term more generally without enumerating specific institutions. Existing definitions were proposed to be redesignated to incorporate new definitions in alphabetical order.

The only comment received on proposed amendments to part 619 was a suggestion from FCCA that the definition of Farm Credit System bank(s) include as an introductory clause "Unless the context otherwise requires," to provide for those situations in which the term is not intended to be all inclusive.

FCA has not accepted the suggestion of the FCCA because it would introduce an element of uncertainty in determining the applicability of regulations. The FCA believes that regulations should delineate their applicability as precisely as possible, and where the term is not intended to be all inclusive, the names of the institutions to which the regulation is applicable should be used instead of the general term. In addition to changes to part 619 proposed on November 3, 1988, the final regulation incorporates a definition of "Federal land credit association," the name given to a Federal land bank association to which an FCB has transferred long-term real estate lending authority by 53 FR 50381, December 15, 1988, and "Farm Credit Bank," the bank formed from the statutorily mandated merger of the Federal intermediate credit bank and the Federal land bank in each district. Also included in the final regulation is the definition of the "Funding Corporation" which refers to the Federal Farm Credit Banks Funding Corporation established pursuant to section 4.9 of the Act.

General technical revisions. In response to editorial comments, the FCA has made minor technical revisions in the final regulation.

List of Subjects in 12 CFR Parts 613, 614, 615, 616, 618 and 619

Accounting, Aged, Agriculture, Archives and records, Banks, banking, Civil rights, Credit, Fair housing, Foreign trade, Government securities, Investments, Insurance, Marital status discrimination, Reporting and recordkeeping requirements, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols, Technical assistance.

For the reasons stated in the preamble, parts 613, 614, 615, 616, 618 and 619 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 is revised to read as set forth below and all other authority citations throughout part 613 are removed.

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252.

2. Subpart A is revised to read as follows:

Subpart A—General

Sec.
613.3000 Authority.
613.3005 Lending objective.

Subpart A—General

§ 613.3000 Authority.

Farm Credit Banks, agricultural credit banks, Federal land credit associations, production credit associations and agricultural credit associations are authorized to make loans under titles I and II of the Act of bona fide farmers, ranchers, producers or harvesters of aquatic products, persons eligible for financing of the processing and marketing of agricultural or aquatic products of eligible borrowers under § 613.3045, rural residents, and persons furnishing services directly related to the on-farm operating needs of farmers and ranchers. Banks for cooperatives are authorized, under title III of the Act, to make loans to eligible cooperatives and other eligible entities, as defined in § 613.3110, and loans to domestic or foreign parties not otherwise eligible in connection with transactions related to the import or export of agricultural or aquatic products, when the loan substantially benefits an eligible cooperative that is a voting stockholder of the bank. Eligibility requirements are set forth in part 613, and lending authorities and requirements are set forth in part 614.

§ 613.3005 Lending objective.

(a) It is the objective of each bank and association, except banks for cooperatives, to provide full credit, to the extent of creditworthiness, to the full-time bona fide farmer (one whose primary business and vocation is farming, ranching, or producing or harvesting aquatic products); and conservative credit to less than full-time farmers for agricultural enterprises, and more restricted credit for other credit requirements as needed to ensure a sound credit package or to accommodate a borrower's needs as long as the total credit results in being primarily an agricultural loan. However, the part-time farmer who needs to seek off-farm employment to supplement farm income or who desires to supplement off-farm income by living in a rural area and is carrying on a valid agricultural operation, shall have availability of credit for mortgages, other agricultural purposes, and family needs in the preferred position along with full-time farmers. Loans to farmers shall be on an increasingly conservative basis as the emphasis moves away from the full-time bona fide farmer to the point where agricultural needs only will be financed for the applicant whose business is essentially other than farming. Credit shall not be extended where investment in agricultural assets for speculative appreciation is a primary factor.

(b) It is the objective of banks for cooperatives to provide a full range of credit services to eligible cooperatives, as defined in § 613.3110(b), to assist such cooperatives in increasing the income of their members as patrons. The type of cooperative operation, quality of management, and basic financial factors shall be carefully evaluated as to their effect upon long-range benefit to members. Each bank for cooperatives shall develop policies and procedures for the administration of quality standards that fully consider the needs of, support by, and service performed for members, and risk protection afforded the lender.

(c) Each Farm Credit bank and association board shall adopt policies providing direction to management in administering credit and lending standards. Management shall prescibe operating procedures to administer board policies that include provisions to ensure that proper weight is given to the wide variety of relationships between applicants, types of property serving as collateral and financing purposes that can exist. For institutions operating under titles I and II of the Act, these policies shall require that loans made under the eligibility provisions of § 613.3020 be predominantly for agricultural or aquatic purposes and shall ensure that nonagricultural-related assets owned by applicants or included in collateral appraisals are not given undue weight in the final loan decision. Management procedures administering these policies shall identify the portion of mixed value (agricultural and nonagricultural) assets that may be considered agricultural for lending purposes.

3. The heading of subpart B is revised to read as follows:

Subpart B—Eligibility To Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Associations, Agricultural Credit Associations and Federal Land Credit Associations

4. Section 613.3010 is revised to read as follows:

§ 613.3010 Definitions.

For the purposes of determining eligibility, the following definitions shall apply:

(a) *Bona fide farmer or rancher* means a person owning agricultural land, or engaged in the production of agricultural products, including aquatic products under controlled conditions.

(b) *Legal entity* means any partnership, corporation, estate, trust, or other entity which is established pursuant to the laws of the United States, or any State thereof, including the Commonwealth of Puerto Rico or the District of Columbia, and which is legally authorized to conduct a business.

(c) *Person* means an individual who is a citizen of the United States or who has been lawfully admitted into the United States for permanent residence, as defined in 8 U.S.C. 1101(a)(20), and is so domiciled or a legal entity in which essentially all of the outstanding stock or equity and voting control is directly or indirectly owned by, or held for the benefit of such individual(s).

(d) *Producer or harvester of aquatic products* means a person engaged in producing or harvesting aquatic products for economic gain in open waters under uncontrolled conditions.

5. Section 613.3020 is revised to read as follows:

§ 613.3020 Eligibility.

(a) *Generally.* To be eligible to borrow from a bank or association under title I or II of the Act, an applicant must be:

(1) A person who is a bona fide farmer, rancher or producer or harvester of aquatic products;

(2) A person qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) A rural resident, as defined in § 613.3040(a)(1); or

(4) A farm-related business, as defined in § 613.3050.

(b) *Eligibility of legal entities.* For the purposes of paragraph (a)(1) of this section, if the applicant is a legal entity—

(1) The legal entity shall satisfy at least one of the criteria set forth in paragraph (b)(1) (i) through (iii) at the time of application:

(i) More than 50 percent of the value or number of shares of the entity's outstanding voting stock or equity shall be owned by the individuals conducting the agricultural or aquatic operation.

(ii) More than 50 percent of the value of the entity's assets shall consist of assets related to the production of

agricultural products or the production or harvesting of aquatic products.

(iii) More than 50 percent of the entity's income shall be generated by its production of agricultural products or the production or harvesting of aquatic products.

(2) In addition to the requirements of paragraph (b)(1) of this section, if the legal entity is one in which 50 percent or more of the ownership or control is vested directly or indirectly in another legal entity that does not satisfy the requirements of paragraph (b)(1) of this section, the applicant shall demonstrate that it can operate as a counterpart to the normal agricultural or aquatic business eligible to borrow without jeopardy to such normal agricultural or aquatic business or the general agricultural or aquatic economy. Such loans shall be appropriately designated in such a manner as to permit segregation for the purpose of monitoring the number and volume of such loans.

(3) Notwithstanding any other provision of this section, a legal entity engaged in agriculture or the production or harvesting of aquatic products for the primary purpose of conducting its operation at a loss to absorb taxable income from nonagricultural or nonaquatic sources shall not be eligible to borrow. Each legal entity shall demonstrate at the time of application that its purpose is to operate for profit.

(c) *Documentation of eligibility.* Each applicant shall submit a complete description of the ownership of the agricultural or aquatic operation being financed and sufficient supporting documentation to demonstrate the applicant's eligibility at the time of application.

6. Section 613.3040 is amended by removing existing paragraph (d)(3), redesignating paragraph (d)(4) as new paragraph (d)(3), and revising paragraph (d)(2) to read as follows:

§ 613.3040 Rural residents.

* * * * *

(d) *Program limitations.** * *

(2) No Farm Credit Bank or agricultural credit bank may at any time have outstanding rural residence loans in an amount exceeding 15 percent of the total of all of its outstanding loans. No Federal land bank association shall originate and no Federal land credit association, production credit association, or agricultural credit association may have outstanding, rural residence loans in an amount exceeding 15 percent of such association's total loans outstanding or originated at the end of the preceding fiscal year, without prior approval by its funding bank; nor shall the aggregate of such loans in a Farm Credit district exceed 15 percent of the outstanding loans of all associations in the bank's chartered territory at the end of the bank's preceding fiscal year.

* * * * *

7. Section 613.3045 is revised to read as follows:

§ 613.3045 Financing of basic processing and marketing activities.

(a) Farm Credit Banks, agricultural credit banks, production credit associations, agricultural credit associations, and Federal land credit associations, are authorized to provide financing for the processing (including storage) and marketing activities of persons eligible to borrow under § 613.3020.

(b) Eligibility to obtain loans to finance basic processing and marketing activities is determined as follows:

(1) If the applicant or, as provided for in paragraph (b)(2)(iii) of this section, the applicant processing and/or marketing unit and its owners, produce 50 percent or more of the annual throughput used in the basic processing and/or marketing operation, eligibility is determined in accordance with § 613.3020 (a)(1) and (b).

(2) If the applicant, or as provided for in paragraph (b)(2)(iii) of this section, the applicant processing and/or marketing unit and its owners, produce less than 50 percent of the annual throughput, the applicant must meet the following three conditions in addition to the requirements of § 613.3020 (a)(1) and (b):

(i) The basic processing and/or marketing activities shall constitute a logical and actual extension of a farmer's, rancher's, or aquatic producer's or harvester's operation for financing vertical integration from the production stage through the basic processing and/or marketing stage.

(ii) The applicant or, as provided for in paragraph (b)(2)(iii) of this section, the applicant processing or marketing unit and its owners, shall produce on a sustained basis a minimum of 20 percent of the annual throughput of the basic processing and/or marketing operation or such higher percentage as may be established by the lending bank or association. Essentially all of the throughput in excess of such minimum amount that is utilized in the processing and/or marketing stage shall be purchased from or handled for eligible borrowers as described in § 613.3020 (a)(1) and (b).

(iii) Where the ownership of the processing and/or marketing operation differs from that of the basic production operation, all of the ownership of the processing and/or marketing operation shall be vested in persons eligible to borrow under § 613.3020 (a)(1) and (b).

(c) Banks and associations shall each develop policies that embody at least the following:

(1) The minimum "throughput" requirement;

(2) The method for defining basic processing and/or marketing activities by commodity or groups of commodities;

(3) Limitations on financing extended under the processing and marketing authority to those needs directly associated with the processing and/or marketing operation;

(4) Provision for adequate documentation for an analysis of the ownership and operational features of the borrower sufficient to establish loan eligibility under this section each time a loan is made or renegotiated;

(5) Provision for appropriately designating loans in which less than 50 percent of the throughput is produced by the borrower or owners of the processing and marketing operation, so as to permit segregation of such loans for the purpose of monitoring the number and volume; and

(6) Authorities and limitations applicable to the institution's financing of processing and marketing operations.

8. Section 613.3050 is amended by revising paragraph (c) to read as follows:

§ 613.3050 Farm-related business.

* * * * *

(c) *Scope of financing.* Farm Credit banks and associations that are direct lenders are authorized to make loans to farm-related businesses as follows:

(1) Farm Credit Banks, agricultural credit banks, agricultural credit associations, and Federal land credit associations, may make long-term real estate mortgage loans to farm-related businesses for necessary sites, capital structures, equipment, and initial working capital for such services, under terms and conditions described in § 614.4210.

(2) Production credit associations and agricultural credit associations may make operating and intermediate-term loans to farm-related businesses for necessary sites, capital structures, working capital, equipment, and operating needs incident to the operation of farm-related businesses under terms and conditions described in § 614.4220.

9. The heading of subpart C is revised to read as follows:

Subpart C—Eligibility of Financial Institutions To Borrow From a Farm Credit Bank or Agricultural Credit Bank

10. Section 613.3060 is revised to read as follows:

§ 613.3060 Institutions eligible.

The Farm Credit Banks and agricultural credit banks may make loans to and discount loans or other obligations for production credit associations, agricultural credit associations, Federal land credit associations, and other financing institutions in accordance with provisions in part 614 of this chapter.

11. The heading of subpart D is revised to read as follows:

Subpart D—Eligibility To Borrow From Banks for Cooperatives and Agricultural Credit Banks

12. Section 613.3110 is amended by revising the heading; redesignating paragraph (c) as (d); adding a new paragraph (c); revising the heading of paragraph (b); and revising paragraphs (a)(4), (b)(1), (b)(2), and (b)(4) to read as follows:

§ 613.3110 Domestic lending.

(a) *Definitions.* * * *

(4) *Service cooperative* is a cooperative predominately involved in providing a specialized business service related to the agricultural or aquatic business operations of farmers, ranchers, or producers or harvesters of aquatic products, or cooperatives.

(b) *Eligible cooperatives.* * * *

(1) Except as the bank's board may establish pursuant to paragraph (b)(2) of this section, the percentage of voting control of the cooperative held by farmers, ranchers, producers or harvesters of aquatic products, or cooperatives eligible to borrow from a bank for cooperatives or agricultural credit bank shall be at least 80 percent except:

* * * * *

(2)(i) Requirements for a higher percentage of voting control by farmers, ranchers, producers or harvesters of aquatic products, or eligible cooperatives than required by paragraph (b)(1) of this section may be established by resolution of the bank's board of directors with respect to any type of cooperative. Such higher voting control percentage requirements shall be applied uniformly and consistently to any type of cooperative so designated in the bank for board resolution.

(ii) Bank board policies shall ensure that management's procedures require good faith representations on the part of borrowers in applications for loans and in loan covenants to affirm that the minimum farmer, rancher, and aquatic producer or harvester voting control percentage requirements established by the Act are met. The procedures shall require documentation in bank loan files of the basis upon which such representations are made and accepted in the case of those cooperatives whose records do not establish the percentage of voting control held by agricultural or aquatic producers.

* * * * *

(4) No member of the cooperative shall have more than one vote because of the amount of stock or membership capital owned therein; or, the cooperative shall restrict dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by the applicable State statutes, whichever is less.

* * * * *

(c) *Other eligible entities.* The following entities are eligible to borrow under section 3.7(a) of the Act from banks for cooperatives, notwithstanding their failure to meet the requirements of paragraph (b)(1) of this section:

(1) Cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that have been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities.

(2) Any legal entity, more than 50 percent of the voting control of which is held by one or more cooperatives or other entities that are eligible to borrow under paragraphs (b) or (c)(1) of this section provided that any such legal entity, when considered together with one or more such legal entities that hold such control, shall also meet the requirements of paragraph (b)(3) of this section.

(3) Any legal entity that:

(i) Holds more than 50 percent of the voting control of a cooperative or other entity that is eligible to borrow from a bank for cooperatives under paragraphs (b) or (c)(1) of this section; and

(ii) Borrows for the purpose of making funds available to that cooperative or entity, under the same terms and conditions as the funds are obtained by such entity from the bank for cooperatives or agricultural credit bank.

(4) Domestic lessors, to finance facilities or equipment leased to eligible cooperatives of other entities eligible to borrow under paragraph (c)(1), (c)(2), or (c)(3) of this section.

* * * * *

13. Section 613.3120 is added to subpart D to read as follows:

§ 613.3120 International lending.

To be eligible to borrow from a bank for cooperatives under section 3.7(b) of the Act and subpart Q of part 614 of these regulations, a person must be:

(a) An eligible cooperative as defined in § 613.3110(b);

(b) A party to a transaction with a voting stockholder of the bank for the import or export of agricultural commodities, farm supplies, or aquatic products through purchases, sales, or exchanges, that substantially benefits the stockholder; or

(c) A party in which an eligible cooperative, as defined in § 613.3110(b), has at least a minimum ownership interest, provided the loan is for the purpose of facilitating a transaction of the eligible cooperative for the import or export of agricultural commodities, farm supplies or aquatic products and substantially benefits the eligible cooperative.

PART 614—LOAN POLICIES AND OPERATIONS

14. The authority citation for part 614 continues to read as follows and all other authority citations throughout part 614 are removed.

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233.

§§ 614.4090, 614.4100 and 614.4130 [Removed] and §§ 614.4030, 614.4040, 614.4050, 614.4060, 614.4140, 614.4150, 614.4160, 614.4190 (c) and (d), 614.4220 and 614.4240(b) [Redesignated as 614.4100, 614.4145, 614.4135, 614.4140, 614.4150, 614.4160, 614.3005, 614.4130 (a) and (b), 614.4240 and 614.4130(c) respectively]

15. Part 614 is amended by removing §§ 614.4090, 614.4100, and 614.4130 and by redesignating the following sections:

Existing section	New section
614.4030	614.4100
614.4040	614.4145
614.4050	614.4135
614.4060	614.4140

Existing section	New section
614.4140	614.4150
614.4150	614.4160
614.4160	613.3005
614.4190 (c) and (d)	614.4130 (a) and (b)
614.4220	614.4240
614.4240(b)	614.4130(c)

16–17. Subpart A is revised to read as follows:

Subpart A—Lending Authorities

Sec.

614.4000 Farm Credit Banks.
614.4010 Agricultural credit banks.
614.4020 Banks for cooperatives.
614.4030 Federal land credit associations.
614.4040 Production credit associations.
614.4050 Agricultural credit associations.

Subpart A—Lending Authorities

§ 614.4000 Farm Credit Banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, Farm Credit Banks are authorized to make, subject to the requirements of §§ 614.4200 and 614.4210, real estate mortgage loans of not less than 5 years nor more than 40 years and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Extensions of credit to Farm Credit direct lender associations.* Farm Credit Banks are authorized to make loans and extend other similar financial assistance to associations with direct lending authority and discount for or purchase from such associations, with the association's endorsment or guaranty, any note, draft, and other obligations for loans that have been made in accordance with the provisions of subparts D and E of part 614 of these regulations. Such extensions of credit shall be made pursuant to a written financing agreement meeting the requirements of § 614.4130(b).

(c) *Extensions of credit to other financing institutions.* Farm Credit Banks are authorized to make loans and extend other similar financial assistance to any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers or any corporation engaged in the making of loans to farmers and ranchers or producers or harvesters of aquatic products (collectively, "other financing institutions"), for purposes eligible for financing by a production credit association in accordance with § 614.4130 and subpart P of this part. Farm Credit Banks are authorized to discount for or purchase from such institutions, with the institution's endorsement or guaranty, notes, drafts, and other obligations or loans made to persons and for purposes eligible for financing by a production credit association, in accordance with § 614.4130 and subpart P of this part.

(d) *Loan participations.* (1) Subject to the requirements of subpart H of part 614 and paragraph (d)(2) of this section, a Farm Credit Bank may enter into loan participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title I of the Act:

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(2) A Farm Credit Bank may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

§ 614.4010 Agricultural credit banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, agricultural credit banks are authorized to make, subject to the requirements of §§ 614.4200 and 614.4210, real estate mortgage loans of not less than 5 years nor more than 40 years and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Extensions of credit to Farm Credit direct lender associations.* Agricultural credit banks are authorized to make loans and extend other similar financial assistance to associations with direct lending authority and discount for or purchase from such associations, with the association's endorsement or guaranty, any note, draft, and other obligations for loans made by the association in accordance with the provisions of this part. Such extensions of credit shall be made pursuant to a written financing agreement meeting the requirements of § 614.4130(b).

(c) *Extensions of credit to other financing institutions.* Agricultural credit banks are authorized to make loans and extend other similar financial assistance to any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers or corporation engaged in the making of loans to farmers, ranchers, or produc ers or harvesters of aquatic products (collectively, "other financing institutions"), for purposes eligible for financing by a production credit association, in accordance with § 614.4130 and subpart P of this part. Agricultural credit banks are authorized to discount for or purchase from such other financing institutions, with the institution's endorsement or guaranty, notes, drafts, and other obligations or loans made to persons and for purposes eligible for financing by a production credit association, in accordance with the requirements of § 614.4130 and subpart P of this part.

(d) *Extensions of credit to or on behalf of eligible cooperatives.* Agricultural credit banks are authorized to make loans and commitments and extend other technical and financial assistance, including but not limited to, collateral custody, discounting notes and other obligations, guarantees, and currency exchanges necessary to service transactions financed under paragraphs (d)(4) and (d)(5) of this section, to:

(1) Eligible cooperatives, as defined in § 613.3110, in accordance with §§ 614.4230, 614.4231, 614.4232, 614.4233, and subpart Q of part 614;

(2) Other eligible entities, as defined in § 613.3110(c), in accordance with §§ 614.4230, 614.4231, and 614.4232;

(3) Domestic lessors, for the purpose of providing leased assets to stockholders of the bank eligible to borrow under section 3.7(a) of the Act for use in such stockholders' operations in the United States, in accordance with § 614.4232;

(4) Domestic or foreign parties with respect to a transaction with a voting stockholder of the bank, for the export or import of agricultural commodities,

farm supplies, or aquatic products through purchases, sales or exchanges, provided such stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board, § 614.4233, and subpart Q of part 614; and

(5) Domestic or foreign parties in which a voting stockholder of the bank has a minimum ownership interest, for the purpose of facilitating such stockholder's export or import operations of the type described in paragraph (d)(3) of this section, provided the stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board, § 614.4233, and subpart Q of part 614.

(e) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (d)(2) of this section, an agricultural credit bank may enter into loan participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under the Act;

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(2) An agricultural credit bank may participate in loans under titles I and II financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

§ 614.4020 Banks for cooperatives.

(a) Banks for cooperatives are authorized to make loans and commitments and extend other technical and financial assistance, including but not limited to, collateral custody, discounting notes and other obligations, guarantees, and currency exchanges necessary to service transactions financed under paragraphs (a)(4) and (a)(5) of this section, to:

(1) Eligible cooperatives, as defined in § 613.3110, in accordance with §§ 614.4230, 614.4231, 614.4232, 614.4233, and subpart Q of this part;

(2) Other eligible entities as defined in § 613.3110(c), in accordance with §§ 614.4230, 614.4231, and 614.4232;

(3) Domestic lessors, for the purpose of providing leased assets to stockholders of the bank eligible to borrow under section 3.7(a) of the Act for use in such stockholder's operations in the United States, in accordance with § 614.4232;

(4) Domestic or foreign parties with respect to a transaction with a voting stockholder of the bank, for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales or exchanges, provided such stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board and subpart Q of this part; and

(5) Domestic or foreign parties in which a voting stockholder of the bank has an ownership interest, for the purpose of facilitating the export or import operations of the type described in paragraph (a)(4) of this section, in accordance with board policy and subpart Q of this part.

(b) *Loan participations.* Subject to the requirements of subpart H of this part, a bank for cooperatives may enter into loan participation agreements with:

(1) Farm Credit banks and association that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title III of the Act:

(2) Farm Credit banks and associations that are direct lenders on loans of the type it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met.

§ 614.4030 Federal land credit associations.

(a) *Long-term real estate lending.* Federal land credit associations are authorized to make, subject to the requirements of §§ 614.4200 and 614.4210, real estate mortgage loans of not less than 5 years nor more than 40 years and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (b)(2) of this section, Federal land associations may enter into participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title I of the Act:

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met;

(2) A Federal land credit association may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

§ 614.4040 Production credit associations.

(a) *Short- and intermediate-term lending.* Production credit associations are authorized to make or guarantee, subject to the requirements of §§ 614.4200, 614.4220, and 614.4222, short- and intermediate-term loans and provide other similar financial assistance for a term not more than 7 years, or such longer periods, not to exceed 10 years, as are set forth in policies approved by its funding bank to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural ares to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Longer intermediate-term lending.* Production credit associations are authorized, subject to the requirements of §§ 614.4200 and 614.4220, to make or guarantee loans with terms of up to 15 years to producers or harvesters of aquatic products for major capital expenditures, including but not limited to the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the producing or harvesting operation.

(c) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (c)(2) of this section, a production credit association may enter into participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title II of the Act; and

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met.

(2) A production credit association may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

§ 614.4050 Agricultural credit associations.

(a) *Long-term real estate lending.* Agricultural credit associations are authorized to make, subject to the requirements of §§ 614.4200 and 614.4210, real estate mortgage loans of not less than 10 nor more than 40 years, and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products.

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Short- and intermediate-term lending.* (1) Agricultural credit associations are authorized to make or guarantee, subject to the requirements of §§ 614.4200, 614.4220, and 614.4222, short- and intermediate-term loans and provide other similar financial assistance for a term not more than 10 years (15 years for acquatic producers and harvesters) to:

(i) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with § 613.3020;

(ii) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers of harvesters of aquatic products.

(iii) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(iv) Farm-related businesses, in accordance with § 613.3050.

(2) Agricultural credit associations are authorized, subject to the requirements of §§ 614.4200 and 614.4220, to make or guarantee loans for terms of up to 15 years to producers or harvesters of aquatic products for major capital expenditures, including, but not limited to, the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the producing or harvesting operation.

(c) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (c)(2) of this section, agricultural credit associations may enter into participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under titles I and II of the Act; and

(ii) Farm Credit banks and associations that are direct lenders on loans of the type it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met.

(2) Agricultural credit associations may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

18. Subpart B is revised to read as follows:

Subpart B—Chartered Territories

Sec.

614.4070 Loans and chartered territory—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.
614.4080 Loans and chartered territory—banks for cooperatives.

Subpart B—Chartered Territories

§ 614.4070 Loans and chartered territory—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

(a) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly within its chartered territory regardless of the residence of the applicant.

(b) A bank or association operating under title I or II of the Act may finance the operations of a borrower headquartered and operating in its territory even though the operation financed is conducted partially outside its territory, provided notice is given to all Farm Credit institutions providing similar credit in the territory(ies) in which the operations being financed are conducted. A bank or association operating under title I or II of the Act may lend to a borrower headquartered outside its territory to finance eligible borrower operations that are conducted partially within its territory and partially outside its territory only if the concurrence of Farm Credit institutions providing similar credit for the territories in which the operations are conducted is obtained.

(c) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly outside its chartered territory, provided such loans are authorized by the policies of the bank and/or association involved, do not constitute a significant shift in loan volume away from the bank or association's assigned territory, and are made and administered in accordance with paragraphs (c)(1) and (c)(2) of this section.

(1) If a loan is made to an eligible borrower whose operations are conducted wholly outside the chartered territory of the lending bank or association, the lending institution shall obtain concurrence of all Farm Credit institutions providing similar credit in the territory(ies) in which the operation being financed is conducted.

(2) Loans to finance eligible borrower operations conducted wholly outside a bank's or association's territory shall be appropriately designated by the bank or association to provide adequate identification of the number and volume of such loans, which shall be monitored by the bank or association.

§ 614.4080 Loans and chartered territory—banks for cooperatives.

Loans made under title III by banks for cooperatives and agricultural credit banks may be made to eligible domestic parties domiciled within any territory that may be served by Farm Credit institutions under section 1.2 of the Act and to eligible foreign parties without regard to domicile.

19. Subpart C is amended by revising the heading and table of contents to read as follows:

Subpart C—Bank/Association Lending Relationship

Sec.

614.4100 Policies governing lending through Federal land bank associations.
614.4110 Transfer of direct lending authority to Federal land bank associations and agricultural credit associations.
614.4120 Policies governing extensions of credit to direct lender associations.
614.4130 Direct loans to associations.
614.4135 Bank supervision of associations.
614.4140 Association responsibilities.
614.4145 Bank guideline responsibilities.

20. Newly redesignated § 614.4100 and §§ 614.4110 and 614.4120 are revised to read as follows:

§ 614.4100 Policies governing lending through Federal land bank associations.

(a) Farm Credit Banks and agricultural credit banks may delegate authority to make credit decisions to Federal land bank associations that demonstrate the ability to extend and administer credit soundly, provided the association develops, implements and maintains adequate credit administration guidelines, standards, and practices.

(b) The board of directors of each Farm Credit Bank and each agricultural credit bank lending through Federal land bank associations shall adopt policies and procedures governing the exercise of statutory and delegated authorities by such associations. Policies governing the delegated authorities shall:

(1) Define authorities to be delegated;

(2) Require the documented evaluation of the capability and responsibility of individuals exercising delegated authorities;

(3) Provide for reporting of actions taken under delegated authority to the delegating bank;

(4) Provide procedures for periodic review and enforcement;

(5) Provide for withdrawal of authority where appropriate; and

(6) Where redelegation from the association's board to association employees is authorized, require similar control measures to be used.

§ 614.4110 Transfer of direct lending authority to Federal land bank associations and agricultural credit associations.

(a) Upon the transfer of authority to make and participate in long-term agricultural real estate mortgage loans by a Farm Credit Bank or agricultural credit bank to a Federal land bank association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, the association shall be designated a Federal land credit association and shall have the powers set forth in § 614.4030.

(b) Upon the transfer of the authority to make and participate in long-term real estate loans by a Farm Credit Bank or agricultural credit bank to an agricultural credit association pursuant to section 7.6(d) of the Act, the association shall have all of the powers set forth in § 614.4050.

(c) An association to which such long-term lending authority is to be transferred shall have in place, prior to the transfer, policies and procedures guiding the extension and administration of credit within its territory.

§ 614.4120 Policies governing extensions of credit to direct lender associations.

(a) The board of each Farm Credit Bank and each agricultural credit bank shall adopt policies and procedures governing the making of direct loans to and the discounting of loans for direct lender associations and other financing institutions. The policies and procedures may provide for servicing actions, including limiting funding for loans of certain types or amounts, to be taken pursuant to the general financing agreement when associations do not demonstrate the ability to extend and administer credit soundly or pose excessive risk to the bank. The policies shall require that the amount of credit extended at all times be consistent with sound financial and credit practices. The policies shall require an evaluation of the creditworthiness of the association on the basis of the factors set forth in §§ 614.4150 and 614.4160, and may permit lending to such institutions on an unsecured basis only if the overall condition of the institution warrants.

(b) The policies and procedures required by paragraph (a), of this section shall require the execution of a financing agreement between the bank and the borrowing institution that meets the requirements of § 614.4130(b).

21–22. Newly redesignated § 614.4130, paragraph (a), is amended by removing the words "production credit" and adding in their place the words "direct lender"; by removing the words "acceptable and problem (as defined by loan classification standards set forth in § 614.4051(a)(4))" and adding in their place, the words "performing loans (as defined in 12 CFR 621.2(a)(20))"; and by removing the words "Federal intermediate credit". Newly redesignated § 614.4130, paragraph (b), is amended by removing the words "Federal intermediate credit banks" and adding in their place, the words "Farm Credit Banks and agricultural credit banks". Newly redesignated § 614.4130, paragraph (c) is amended by removing the words "Direct loans to production credit associations."; and by removing the words "a production credit" and adding in their place, the word "an". The heading of newly redesignated § 614.4130 is revised to read as follows:

§ 614.4130 Direct loans to associations.

23. The table of contents of subpart D is revised to read as follows:

Subpart D—General Loan Policies for Banks and Associations

Sec.
614.4150 Sound loan.
614.4160 Credit factors.
614.4165 Special credit needs.
614.4170 [Reserved]

24. Newly redesignated § 614.4160 is revised to read as follows:

§ 614.4160 Credit factors.

Each Farm Credit bank and association shall develop policies and procedures that ensure that its lending practices result in sound loans. The policies and procedures shall ensure that the institution, in evaluating the creditworthiness of the application, analyzes and documents its analysis of the following factors:

(a) The integrity and capability of the applicant(s) to manage the enterprise being financed;

(b) The financial condition of the applicant(s);

(c) The repayment capacity of the applicant(s);

(d) The adequacy and appropriateness of the collateral; and

(e) The constructiveness and practically of the loan amount, purpose, and terms and conditions.

25. Section 614.4165 is amended by removing paragraph (f) and by revising paragraphs (c) introductory text and (d) to read as follows:

§ 614.4165 Special credit needs.

* * * * *

(c) The board of each Farm Credit Bank, agricultural credit bank, and direct lender association shall adopt policies to establish programs to provide credit and related services to young, beginning, or small farmers, ranchers, and producers or harvesters of aquatic products. Such policies shall outline objectives of the programs and shall include, but not be limited to, the following:

* * * * *

(d) Each Farm Credit Bank and agricultural credit bank shall provide to the Farm Credit Administration an annual report summarizing the operations and achievements in its chartered territory under such programs. Such reports shall be based on the reports from each association providing services under these programs and shall be in a format prescribed by the Farm Credit Administration.

* * * * *

§ 614.4170 [Reserved]

26. Section 614.4170 is removed and reserved.

§ 614.4180 [Removed] and § 614.4190 [Amended]

27. Existing §§ 614.4180, 614.4190 (a) and (b), of subpart E are removed.

§ 614.4230 [Removed] and § 614.4240 [Amended]

28. Part 614, subpart F, is amended by removing existing §§ 614.4230, 614.4240 (a) and (c).

29. Subpart E is revised to read as follows:

Subpart E—Loan Terms and Conditions

Sec.

614.4200 General requirements.
614.4210 Long-term real estate loans.
614.4220 Short- and intermediate-term loans.
614.4222 Non-farm rural home loans.
614.4230 Loans to eligible cooperatives.
614.4231 Certain seasonal commodity loans to cooperatives.
614.4232 Loans to domestic lessors.
614.4233 International loans.

Subpart E—Loan Terms and Conditions

§ 614.4200 General requirements.

(a) *Loan agreement.* The terms and conditions of each loan made by a Farm Credit bank or association shall be set forth in a formal written loan agreement between the borrower and the lender and shall be adequately disclosed to the borrower prior to closing. The form and content of loan agreements shall be in accordance with the policies of the institution's board and may vary according to such criteria as borrower type and amount of the credit extension.

(b) *Notice of approval—(1) Loans made under titles I and II of the Act.* When the loan closing will occur more than 15 days after notification of the action taken on the loan is mailed or otherwise provided under section 4.13B of the Act, the notice of approval shall set forth the terms and conditions on which credit will be extended.

(2) *Loans made under title III of the Act.* The documents evidencing approval by a bank for cooperatives shall set out the terms and conditions under which a loan is approved.

(c) *Annual borrower financial statements.* As a condition precedent to making a loan, Farm Credit banks operating under title I and associations operating under title II of the Act shall obtain a verifiable balance sheet and income statement from each borrower that has been certified as true and correct by the borrower. The loan agreement shall require that the borrower provide a verifiable balance sheet and income statement at least annually, except that loans that meet the requirements of an institution's minimum information program having a maximum limitation of $100,000 of outstanding loans and commitments per borower, and loans with regular and frequently scheduled payments, such as rural housing or other similar amortized consumer-type loans, may be excluded from this requirement, provided there is adequate documentation to support repayment capacity.

§ 614.4210 Long-term real estate loans.

(a) *First lien requirement.* Long-term real estate mortgage loans made by Farm Credit Banks under § 614.4000(a), agricultural credit banks under § 614.4010(a), Federal land credit associations under § 614.4030, and agricultural credit associations under § 614.4050(a), must be secured by a first lien on an interest in real estate comprising agricultural property, an eligible farm-related business, an eligible rural residence, or real estate used as an integral part of an eligible aquatic operation. Additional security may be required for such loans, but shall only be considered supplementary protection and may not be included in the value of the security for purposes of applying the loan-to-value limitations set forth in paragraph (b) of this section for real estate mortgage loans. A borrower who has been requested to provide additional collateral shall be accorded the right to an independent appraisal set forth in § 614.4443.

(b) *Loan-to-value percentage.* (1) No funds shall be advanced, under a legally binding commitment or otherwise, if the outstanding loan balance after the advance would exceed 85 percent (97 percent if guaranteed by a Federal, State, or other governmental agency) of the appraised value of the real estate taken as primary security, established by the most recent appraisal report meeting the requirements of subpart F of this part.

(2) The Farm Credit Administration may, through the exercise of its enforcement powers or otherwise, reduce the maximum loan-to-value percentage to 75 percent for a particular institution when the Farm Credit Administration determines that the lending and business practices of the institution are imprudent.

(3) Notwithstanding the limitations of paragraph (b)(1) and (b)(2) of this section, the lending institution may advance funds for the payment of taxes or insurance premiums with respect to the real estate, reschedule loan payments, grant partial releases of security interests in the real estate, and take other actions necessary to protect the lender's collateral position—

(i) If there is adequate collateral to support the total amount of the outstanding debt and such action will increase the ability of the debtor to repay the debt; or

(ii) If there is inadequate collateral to support the debt, but the actions are considered necessary to protect the financial interest of the lender in the collateral.

(4) All actions taken pursuant to paragraph (b)(3) of this section shall be in accordance with a policy of the institution's board of directors specifically addressing such exceptions and shall be reported to the board on a regular basis.

(c) *Repayment capacity.* The borrower's earnings history, repayment record, and net earnings projections must satisfactorily support the loan and provide assurance for repayment.

§ 614.4220 Short- and intermediate-term loans.

(a) *Maturities.* (1) Short-term operating loans shall be made with maturities that are appropriate for the purpose of the loan and that coincide with the normal business cycle of the enterprises being financed.

(2) Intermediate-term loans shall be made with maturities appropriate for the purpose of the loan, in accordance with policies established by the association's board and its funding bank.

(b) *Security.* (1) Short- and intermediate-term operating loans shall be unsecured only when the creditworthiness of the borrower warrants.

(2) When specific major capital items, such as new equipment, new or remodeled buildings, or facilities are financed, the term of the loan must be shorter than the useful life of the item, and the amount outstanding must at all times be less than the value of the item after normal depreciation. The loan shall be amortized and the purpose of the loan specifically identified.

(c) *Repayment capacity.* The borrower's earnings history, repayment record, and net earnings projections must satisfactorily support the loan and provide assurance for repayment. For loans with maturities in excess of 7 years, the borrower's earnings history, repayment record, and net earnings projections must provide assurance of repayment in a level amortization period that coincides with the term of the loan.

§ 614.4222 Non-farm rural home loans.

Non-farm rural home loans for the purchase, construction or refinancing of rural residences shall be secured by a first lien interest on the residence being constructed, purchased, or refinanced and shall meet the requirements of § 614.4210. Short- and intermediate-term loans for repairs and improvements to rural homes may be secured by a lien on

real estate or other security as is determined necessary to protect the lender.

§ 614.4230 Loans to eligible cooperatives.

Except as otherwise provided in this subpart, loans made under the authority of section 3.7(a) of the Act shall be made on the following terms and conditions:

(a) *Maturity and repayment.* The maturities of loans made under the authority of section 3.7(a) of the Act shall be appropriate for the purpose of the loan.

(1) Seasonal loans shall be primarily for financing current assets and shall normally be repaid within 18 months.

(2) Term loans shall be for financing noncurrent assets for working capital and should generally be made on an amortized basis.

(3) The term of a leveraged lease loan shall not be longer than the total period of the lease.

(b) *Security.* Except as provided in § 614.4231, loans made under section 3.7(a) of the Act may be secured or unsecured, as appropriate for the purpose of the loan, the repayment period and credit factors. Loans scheduled for repayment over an extended period should be normally be secured.

§ 614.4231 Certain seasonal commodity loans to coopertives.

(a) *Definitions.* For the purpose of this section, the following definitions shall apply:

(1) *Commodities* means agricultural goods and merchandise, except for live animals, that are transportable; can be accurately classified by standards of quality and quantity; and enjoy broad regional, national, or international markets within which similar items are regularly traded and the value thereof readily and regularly determined.

(2) *Hedge* means an enforceable contract with a reliable third party to deliver at a designated point of delivery, at a designated time or within a designated period of time, commodities of specified quality and quantity at a specified price. Seller options will not generally invalidate the hedge unless they are of such a nature as to invalidate the entire contract. If options are provided to the purchase under the contract, the hedge value of the contract shall be determined on the basis of the most pessimistic combination of options. The Commodity Credit Corporation's (CCC) general offer to purchase may be accepted as a valid hedge if loan advance, expiration and maturity dates conform with CCC established availability; if maturity dates and loan agreement restrictions insure compliance with CCC quality and crop year standards; and if the following conditions exist:

(i) *Barley, corn, oats, rye, sorghum, wheat, rice, soybeans, and honey.* Borrower must possess a current letter recognizing it has a CCC approved cooperative marketing association and pledged commodity must not have been previously financed by CCC.

(ii) *Cotton.* Borrower must have entered into a current Form G agreement with CCC and pledged cotton must not have been previously financed by CCC.

(iii) *Peanuts.* Borrower must be eligible to offer commodity to CCC and be a current member and signer of an are peanut marketing agreement.

(b) *Requirements.* Seasonal loans to finance commodities that qualify for special interest rate and lending limit consideration shall be secured and subject to the following requirements:

(1) Loans that are secured by a chattel mortgage, factor's lien, security agreement, or security other than warehouse receipts or other title documents shall not exceed 65 percent of the net value of unhedged or 85 percent of the net value of hedged commodities and the borrower must have sufficient working capital to keep the loan properly margined.

(2) Loans secured by warehouse receipts or other title documents shall not exceed 75 percent of the unhedged net value of the commodity or 90 percent of the hedged value and the borrower must have sufficient working capital to keep the loan properly margined.

(3) Loans secured by contract rights under the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture, special program of payment in kind for acreage diversion for 1983 or subsequent crop years of wheat, corn, grain sorghum, upland cotton, and rice (7 CFR part 1470) shall be eligible for the same net value amounts as loans secured by title documents.

(c) Trust receipts, negotiable bills of lading, shipping documents, drafts and acceptances may be accepted in such amounts and for such periods as reasonable prudence permits as necessary to allow the orderly marketing, handling, or processing of the commodities.

(d) Documents required in conjunction with these loans may be held by a custodian selected by the bank. In such cases the bank shall provide the custodian written instructions outlining procedures and practice to be followed in the acceptance, handling, and release of all related documents. The custodian shall be adequately bonded. The bank shall provide for periodic review of custodial activities by bank officials and shall establish that activities of the custodian are subject to review and examination by the Farm Credit Administration.

§ 614.4232 Loans to domestic lessors.

Loans and financial assistance extended by banks for coopertives and agricultural credit banks to domestic lessors to finance equipment or facilities leased by a voting stockholder of the bank shall be subject to the following terms and conditions:

(a) The term of the loan shall not be longer than the total period of the lease;

(b) The contract between the lessor and lessee shall establish that the leased assets are effectively under the control of the lessee and that such control shall continue in effect for essentially all of the term of the lease;

(c) The lessee must be a voting stockholder of the bank; and

(d) The leased equipment and facilities must be primarily for use in the lessee's operations in the United States.

§ 614.4233 International loans.

Loans made by banks for cooperatives and agricultural credit banks under the authority of section 3.7(b) of the Act to foreign or domestic parties to finance export or import transactions with a voting stockholder of the bank and loans to a foreign or domestic party in which a voting stockholder of the bank has at least a minimum ownership interest to facilitate such transactions shall be subject to the conditions of paragraphs (a), (b), and (c) of this section:

(a) The loan shall be denominated in a currency to eliminate foreign exchange risk on repayment.

(b) The borrower's obligations shall be guaranteed or insured against default under such policies as are available in the United States and other longstanding successful business relationship with an eligible cooperative borrower or an eligible cooperative which is not a borrower if the prospective borrower has a high credit rating as determined by the bank.

(c) For a borrower in which a voting stockholder of the bank has a majority ownership interest, financing may be extended for the full value of the transaction; otherwise, financing may be extended only to approximate the percent of ownership.

§§ 614.4250 and 614.4260 [Reserved]

30. Subpart F is amended by removing and reserving §§ 614.4250 and 614.4260; and revising the heading and the table of contents of subpart F to read as follows:

Subpart F—Appraisal Requirements

Sec.
614.4240 General.
614.4250 [Reserved]
614.4260 [Reserved]
614.4261 Security and appraisal standards—banks for cooperatives.

Subpart J—Lending Limits

§ 614.4354 Banks for cooperatives.

31. Section 614.4354 is amended by removing the reference "§ 614.4120" and adding in its place, "§ 614.4010(d)(3) or § 614.4020(a)(3)" in paragraph (a)(1)(iii); and by removing the reference "§ 614.4260(c)" and adding in its place "§ 614.4231" in paragraphs (a)(1)(vi), (a)(1)(viii), and (a)(1)(x).

Subpart O—Special Lending Programs

32. Section 614.4525 is amended by revising paragraph (a); removing the introductory words "Federal land bank." and revising the first sentence of paragraph (b) to read as follows:

§ 614.4525 General.

(a) To provide the best possible credit service to farmers, ranchers, and producers or harvesters of aquatic products, bank and association boards may adopt policies permitting the bank or association to enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate its making of loans to eligible farmers, ranchers, and producers or harvesters of aquatic products.

(b) A bank or association, pursuant to its board policies, may enter into an agreement with third parties that will accrue to the benefit of the borrower and the lender to perform functions in the making or servicing of loans other than the evaluation and approval of loans. * * *

* * * * *

§ 614.4530 Special loans, production credit associations and agricultural credit associations.

33. Section 614.4530 is amended by adding the words "and agricultural credit associations" after the words "production credit associations" in the heading and in the introductory paragraph.

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

34. The heading of subpart P is amended by removing the words "Federal Intermediate Credit Bank" and adding in their place, the words "Farm Credit Bank and Agricultural Credit Bank".

35. Section 614.4540 is amended by revising paragraph (e) and adding paragraphs (h) and (i) to read as follows:

§ 614.4540 Definitions.

* * * * *

(e) The term "other financing institution (OFI)" means any person enumerated in section 1.7(b)(1)(B) of the Act, except to the extent that depository institutions, as defined herein, are specifically excluded from the term.

* * * * *

(h) The term "bank(s)" refers collectively to Farm Credit Banks, as defined in section 1.3 of the Act, and agricultural credit bank(s) as defined in part 619.

(i) The term "association(s)" refers collectively to production credit associations, and agricultural credit associations.

§ 614.4545 General.

36. Section 614.4545 is amended by removing the words "Federal intermediate credit" in paragraphs (a) and (c) introductory text, (d) and (e); and by adding the words "or agricultural credit associations" after the words "production credit associations" in the second sentence of paragraph (b).

§ 614.4550 Basic eligibility criteria.

37. Section 614.4550 is amended by removing the words "Federal intermediate credit" in paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) and (b).

§ 614.4555 Review of denial of access based on eligibility.

38. Section 614.4555 is amended by removing the words "Federal intermediate credit" in the first sentence.

§ 614.4560 Establishing and maintaining access.

39. Section 614.4560 is amended by removing the words "Federal intermediate credit" in paragraphs (a), (b)(1), (b)(2), (b)(3), (b)(4) and (b)(5) each place it appears; by removing the words "production credit" in paragraphs (b)(2), (b)(3) and (b)(4) each place it appears; and by removing the acronym "FICB" and adding in its place the word "bank" in the fourth sentence of paragraph (b)(5).

§ 614.4565, 614.4570, 614.4580, 614.4590, 614.4600, 614.4610, 614.4620, 614.4630, 614.4640, 614.4650 and 614.4660 [Amended]

40. In addition to the amendments set forth above and below, 12 CFR part 614 is amended by removing the words "production credit" in §§ 614.4610 and 614.4640; and by removing the words "Federal intermediate credit" in the following sections:

(a) Section 614.4565;
(b) Section 614.4570;
(c) Section 614.4580;
(d) Section 614.4590;
(e) Section 614.4600(a) introductory text, (a)(1) and (a)(2);
(f) Section 614.4610;
(g) Section 614.4620;
(h) Section 614.4630(a);
(i) Section 614.4640;
(j) Section 614.4650(a) introductory text, (a)(1) and (b); and
(k) Section 614.4660.

Subpart Q—Banks for Cooperatives Financing International Trade

41. Section 614.4700 is amended by revising paragraph (a) to read as follows:

§ 614.4700 Financing foreign trade receivables.

(a) Banks for cooperatives, under policies adopted by their boards of directors, are authorized to finance foreign trade receivables on behalf of eligible cooperatives to include the following:

(1) Advances against collections;
(2) Trade acceptances;
(3) Factoring; and
(4) Open accounts.

* * * * *

42. Section 614.4710 is revised to read as follows:

§ 614.4710 Bankers acceptance financing.

The Funding Corporation is authorized to accept drafts or bills of exchange drawn upon banks for cooperatives. With the exception of acceptances eligible for purchase by the Federal Reserve Banks under the direction and regulation of the Federal Open Market Committee and rediscounted, acceptances shall be subject to the provisions of §§ 614.4350, 614.4354, and 614.4360 of this part and must be combined with any other loans to the account party by the banks for cooperatives for the purpose of applying the lending limits of § 614.4354 of this part.

(a) *Limitations.* (1) The Funding Corporation is authorized to accept drafts or bills of exchange drawn upon a bank for cooperatives having not more than 6 months' sight to run, exclusive of days of grace, that are derived from transactions involving the importation or exportation of agricultural commodities, farm supplies, or aquatic products into or out of the United States; or are derived from transactions involving the domestic shipment of goods that were produced from

agriculture or commerical fishing or that have an agriculturally or aquatically related purpose; or are secured at the time of acceptance by title covering readily marketable staples.

(i) The dollar amount of such acceptances outstanding at any one time to any one borrower, exclusive of participations sold to others, shall be limited to 10 percent of the net worth of a bank for cooperatives as calculated on a monthly basis after making the elimination required by § 615.5210(d)(3). However, if such acceptances are secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance, the 10-percent limit shall not apply.

(ii) The sum of all acceptance liabilities outstanding described in paragraph (a)(1) of this section, exclusive of participations sold to others, issued to all borrowers shall not exceed 150 percent of the bank for cooperatives' net worth, but the aggregate of acceptances growing out of domestic transactions shall not exceed 50 percent of net worth calculated on a monthly basis.

(2) The limit specified in paragraph (a)(1)(i) of this section is separate from and in addition to the lending limits of § 614.4354 of this part if the acceptances are rediscounted.

(3) During any period within which a bank for cooperatives holds its own acceptance, having given value therefor, the amount thereof shall be included against the lending limits set forth in § 614.4354 of this part of the customer for whom the acceptance was made.

(4) The terms and requirements for the offering and purchase of participations in acceptance financing shall be the same as those for loans made under § 614.4334 of this part.

(5) When acceptances denominated in foreign currencies are not funded in the same currency, the bank for cooperatives shall take corresponding action to minimize foreign exchange risk.

(b) *Purchases of participations in bankers acceptances.* (1) A bank for cooperatives shall determine limits on purchasing participations in discounted acceptances of another bank for cooperatives on the same basis as prescribed in § 614.4354 of this part for purchasing participations in loans of another bank for cooperatives.

(2) Participations in discounted acceptances shall be offered in accordance with § 614.4334 of this part.

(c) *Funding Corporation.* All acceptances created by the banks for cooperatives shall be physically accepted by the Funding Corporation when intended for rediscount.

43. Section 614.4720 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 614.4720 Letters of credit.

Banks for cooperatives, under policies adopted by their boards of directors, may issue, advise, or confirm import or export letters of credit in accordance with the Uniform Commercial Code, or the Uniform Customs and Practice for Documentary Credits, to or on behalf of its customers. In addition, as a matter of sound banking practice, letters of credit shall be issued in conformity with the list which follows.

(a) Each letter of credit shall be in writing and shall conspicuously state that it is a letter of credit, or be conspicuously entitled as such.

* * * * *

44. Section 614.4800 is revised to read as follows:

§ 614.4800 Guarantees and contracts of suretyship.

A bank for cooperatives, under a policy approved by the bank's board of directors, may lend its credit, be itself a surety to indemnify another, or otherwise become a guarantor if an eligible cooperative substantially benefits from the performance of the transaction involved. A bank may guarantee the debt of eligible cooperatives and foreign parties or otherwise agree to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies a maximum monetary liability. Guarantees may be secured or unsecured, and can include, but are not limited to, such events as nonpayment of taxes, rentals, customs duties, costs of transport, and loss of or nonconformance of shipping documents. The bank's customer shall have an unqualified obligation to reimburse the bank for payments made under a guarantee or surety.

§ 614.4810 Standby letters of credit.

45. Section 614.4810 is amended by removing the reference "§ 614.4120" and adding in its place, "§ 614.4010(d) or § 614.4020" in paragraph (a) introductory text; and by removing the reference "§ 614.4150" and adding in its place,"§ 614.4160" in paragraph (b).

46. Section 614.4900 is amended by revising paragraphs (a), (b) introductory text, and (i) to read as follows:

§ 614.4900 Foreign exchange.

(a) Before a bank for cooperatives may engage in any financial transaction which transports monetary instruments from any place within the United States to or through any place outside the United States or to any place within the United States, the bank must have policies adopted by the bank's board of directors governing such transactions and must have established bank procedures to safeguard the interests of the stockholders of the bank in regard to such transactions.

(b) Under policies adopted by the bank's board of directors, a bank for cooperatives may engage in currency exchange activities necessary to service individual transactions that may be financed under the regulations authorizing export, import, and other internationally related credit and financial services. These currency exchange activities shall not include any loans or commitments intended to finance speculative futures transactions by eligible borrowers in foreign currencies. The bank may engage, on behalf of the eligible borrowers or on its own behalf, in bona fide hedging transactions and positions, where such transactions or positions normally reduce risks in the conduct and management of international financial activities. The bank's policies should include established guidelines for:

* * * * *

(i) The banks for cooperatives shall use the Funding Corporation for purposes of trading foreign exchange. All foreign exchange transactions shall be made by the Funding Corporation on behalf of the banks consistent with instructions received from the respective banks.

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

47. The authority citation for part 615 is revised to read as follows and all other authority citations throughout part 615 are removed.

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

Subpart E—Investments

48. Section 615.5160 is amended by removing existing paragraph (c); redesignating paragraph (d) as new paragraph (c) and paragraph (e) as new paragraph (d); and revising paragraph (a) and newly designated paragraph (c) to read as follows:

§ 615.5160 Production credit association and agricultural credit association investment in farmers' notes given to cooperatives and dealers.

(a) In accordance with policies prescribed by the board of directors of the Farm Credit Bank or agricultural credit bank and each production credit association and agricultural credit association (hereinafter association(s)), such association(s) may invest in notes, conditional sales contracts, and other similar obligations given to cooperatives and private dealers by farmers and ranchers eligible to borrow from such associations.

* * * * *

(c) The total amount which an association may invest in such obligations at any one time shall not exceed 15 percent of the balance of its loans outstanding at the close of the association's preceding fiscal year. In addition, the total amount which an association may invest in such obligations that are originated by any one cooperative or private dealer, at any one time, shall not exceed 50 percent of association capital and surplus.

* * * * *

Subpart G—Deposit of Funds

49. Section 615.5190 is amended by removing the reference "§ 614.4080(d)" and adding in its place, "section 3.7(b) of the Act" in paragraph (b); and by revising paragraph (a) to read as follows:

§ 615.5190 General.

(a) Farm Credit banks and associations may deposit securities and current funds with and receive interest from any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 3 of the Federal Deposit Insurance Act). Associations may also deposit funds with their respective funding Farm Credit banks.

* * * * *

Subpart Q—Bankers Acceptances

50. Section 615.5550 is revised to read as follows:

§ 615.5550 Bankers acceptances.

Subject to the provisions of § 614.4710, banks for cooperatives may rediscount with other purchasers the acceptances they have created. The bank for cooperatives' board of directors, under established policies, may delegate this authority to management.

PART 616—[RESERVED]

51. Part 616 is removed and reserved.

PART 618—GENERAL PROVISIONS

52. The authority citation for part 618 continues to read as follows and all other authority citations throughout part 618 are removed.

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart C—Leasing

53. Section 618.8050 is revised to read as follows:

§ 618.8050 Leasing authority.

A Farm Credit bank or association with direct lending authority may own and lease, or lease with option to purchase, to its eligible borrowers, equipment or facilities needed in the farming and aquatic or cooperative operations of such eligible borrowers.

Subpart J—Internal Controls

54. Section 618.8430 is revised to read as follows:

§ 618.8430 Internal controls.

Each Farm Credit institution's board of directors shall adopt an internal control policy which provides adequate direction to the institution in establishing effective control over and accountability for operations, programs, and resources. The policy shall include, at a minimum, the items enumerated in the list which follows:

(a) Direction to management which assigns responsibility for the internal control function (financial, credit, credit review, collateral, and administrative) to an officer (or officers) of the institution.

(b) Adoption of internal audit and control procedures that evidence responsibility for review and maintenance of comprehensive and effective internal controls.

(c) Direction for the operation of a program to review and assess its assets. These policies shall include standards which address the administration of this program, described in the list which follows:

(1) Loan, loan-related assets, and appraisal review standards, including standards for scope of review selection and standards for workpapers and supporting documentation.

(2) Asset quality classification standards to be utilized in accordance with a standardized classification system consistent among associations within a district and their funding Farm Credit Bank or agricultural credit bank.

(3) Standards for assessing credit administration, including the appraisal of collateral.

(4) Standards for the training required to initiate the program.

PART 619—DEFINITIONS

55. The authority citation for part 619 is revised to read as follows and all other authority citations throughout part 619 are removed.

Authority: Secs. 1.7, 2.4, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8; 12 U.S.C. 2015, 2075, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2.

§§ 619.9020, 619.9060, 619.9135, 619.9140, 619.9150, and 619.9160 [Redesignated as 619.9025, 615.9065, 619.9146, 619.9150, 619.9160 and 619.9165 Respectively].

56. Part 619 is amended by redesignating existing § 619.9020 as new 619.9025; adding new §§ 619.9015 and 619.9020; revising existing § 619.9050; redesignating existing § 619.9060 as new § 619.9065; adding a new § 619.9060; redesignating existing §§ 619.9135, 619.9140, 619.9150, 619.9160 as new §§ 619.9146, 619.9150, 619.9160, 619.9165; adding new §§ 619.9135 and 619.9140; revising newly redesignated § 619.9146; and adding new §§ 619.9145, 619.9155, and 619.9185 to read as follows:

§ 619.9015 Agricultural credit associations.

Agricultural credit associations are associations created by the merger of one or more Federal land bank associations or Federal land credit associations and one or more production credit associations and which have received a transfer of authority to make and participate in long-term real estate mortgage loans pursuant to section 7.6 of the Act.

§ 619.9020 Agricultural credit banks.

Agricultural credit banks are those banks created by the merger of a Farm Credit Bank and a bank for cooperatives pursuant to section 7.0 of the Act.

§ 619.9050 Associations.

The term "associations" includes (individually or collectively) Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

§ 619.9060 Bank for cooperatives.

Bank for operating under title III of the Act, including the National Bank for Cooperatives, individual and regional banks for cooperatives and agricultural credit banks.

§ 619.9135 Direct lender.

The term "direct lender" refers to Farm Credit banks and associations (production credit associations, agricultural credit associations, and Federal land credit associations) authorized to lend to eligible borrowers identified in § 613.3000.

§ 619.9140 Farm Credit bank(s).

Except as otherwise defined, the term "Farm Credit bank(s)" includes Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

§ 619.9145 Farm Credit Bank.

The term "Farm Credit Bank" refers to a bank resulting from the mandatory merger of the Federal land bank and the Federal intermediate credit bank in each Farm Credit district pursuant to section 410 of the Agricultural Credit Act of 1987, Pub. L. 100–233, or any bank resulting from a merger of two or more Farm Credit Banks.

§ 619.9146 Farm Credit institutions.

Except as otherwise defined, the term "Farm Credit institutions" refers to all institutions chartered and regulated by the Farm Credit Administration as described in section 1.2 of the Act.

§ 619.9155 Federal land credit association.

The term "Federal land credit association" refers to a Federal land bank association that has received a transfer of direct long-term real estate lending authority pursuant to section 7.6 of the Act.

§ 619.9185 Funding Corporation.

The term "Funding Corporation" refers to the Federal Farm Credit Banks Funding Corporation established pursuant to section 4.9 of the Act.

* * * * *

§ 619.9080 Cooperative.

57. Section 619.9080 is amended by removing the reference "§ 613.3070" and adding in its place, "§ 613.3110(a)(1)".

§ 619.9165 Five basic credit factors.

58. Newly redesignated § 619.9165 is amended by removing the reference "§ 614.4150" and adding in its place, "§ 614.4160".

§ 619.9290 Recovery value.

59. Section 619.9290 is amended by removing the reference "§ 614.4220" and adding in its place, "§ 614.4140".

§ 619.9320 Sound loan.

60. Section 619.9320 is amended by removing the reference "§ 614.4140" and adding in its place, "§ 614.4150".

* * * * *

Dated: June 7, 1990

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 90–13862 Filed 6–18–90; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Room Air Conditioners

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for room air conditioners will remain in effect until new ranges are published.

Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the Federal Register if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The Commission is today announcing that the ranges published on September 22, 1989, for room air conditioners will remain in effect until new ranges are published.

EFFECTIVE DATE: June 19, 1990.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including room air conditioners. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all room air conditioners presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a room air conditioner is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for room air conditioners have been received and analyzed and it has been determined to retain the ranges that were published on September 22, 1989.[4] In consideration of the foregoing, the present ranges for room air conditioners will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988), 42 U.S.C. § 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

[1] 44 FR 66466, 16 CFR part 305.

[2] Public Law 94–163, 89 Stat. 871 (Dec. 22, 1975).

[3] Reports for room air conditioners are due by May 1.

[4] 54 FR 38966.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-14156 Filed 6-18-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AC71

Federal Old-Age, Survivors, and Disability Insurance Benefits; Rules Governing Social Security Coverage of Federal Employment

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final rules reflect section 8015 of Public Law 100-647, the Technical and Miscellaneous Revenue Act of 1988, enacted November 10, 1988. Section 8015 concerns the Social Security coverage of work performed by certain civilian employees for the United States Government or an instrumentality of the United States (Federal service). Section 8015 makes the following three changes to the Social Security Act (the Act). First, section 8015(a) amends the Act to clarify that the Secretary of Health and Human Services (the Secretary) is to determine whether an individual's Federal service is covered Social Security employment. Second, section 8015(b) clarifies the coverage for Social Security purposes of service under the Foreign Service Pension System. Third, section 8015(c) provides that Federal civilian employees who are once covered by Social Security will retain Social Security coverage in subsequent Federal service.

DATES: This regulation is effective June 19, 1990. The statutory provisions of section 8015 of Public Law 100-647 reflected in these regulations are effective as follows: Section 8015(a) is effective for determinations made by the Secretary relating to Federal civilian service commenced in any position on or after November 10, 1988; section 8015(b) is effective on June 6, 1986, as if it had been included in section 304 of the Federal Employees' Retirement Systems Act of 1986 at the time of its enactment on June 6, 1986; and section 8015(c) is effective for Federal civilian service performed on or after November 10, 1988, in a position mandatorily covered by Social Security

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1769.

SUPPLEMENTARY INFORMATION: Section 8015 of Public Law 100-647 makes changes to the Act which concern Social Security coverage of work performed by certain civilian employees for the United States Government or an instrumentality of the United States (Federal service).

Section 8015(a) amends section 205(p)(1) of the Act to clarify that the Secretary, not the head of any other Federal agency, will determine whether an individual's Federal service is covered Social Security employment. The head of the individual's employing agency will continue to determine the amount of remuneration paid for the individual's service and the periods in which or for which such remuneration was paid.

Section 205(p)(1) of the Act provides special rules for Federal service. Prior to enactment of section 8015(a), these special rules provided that the Secretary was to accept the determinations made by the heads of other Federal agencies and instrumentalities as to whether a Federal employee had performed Federal service, the periods of such service, the amount of remuneration for such service which constitute wages under section 209 of the Act, and the periods of time in which and for which the wages were paid. Section 8015(a) clarifies that section 205(p)(1) of the Act is not to be construed to affect the Secretary's authority to make determinations under sections 209 and 210 of the Act as to whether an individual's Federal service constitutes employment, the periods of such employment, and whether remuneration paid for such service constitutes wages. Sections 209 and 210 of the Act contain provisions regarding the definition of wages and the definition of employment, respectively.

We are incorporating the provisions of amended section 205(p)(1) of the Act into the regulations at §§ 404-823 and 404-1018(a). This statutory change is effective with respect to determinations made by the Secretary relating to service commenced in any position on or after November 10, 1988.

Section 8015(b) of Public Law 100-647 amends and clarifies section 210(a)(5)(H) of the Act, which addresses coverage for Social Security purposes of Federal service performed by an individual after he or she elects to be covered under the Federal Employees' Retirement System Act of 1986, including an individual who elects such coverage under the Central Intelligence Agency Retirement Act of 1964, or an individual who elects coverage pursuant to the Foreign Service Act of 1980.

The clarification provides that a Federal civilian employee subject to the Foreign Service Act of 1980 may make a timely election to be covered under the Foreign Service Pension System Act of 1986. This clarification removes the erroneous indication in the Act that these particular Federal civilian employees could make a timely election to be covered under the Federal Employees' Retirement System Act of 1986, which is a different system. We added this statutory clarification to our regulations by changing the title and updating the text in § 404-1018(b)(3).

Section 8015(c) of Public Law 100-647 amends section 210(a)(5) of the Act by providing that a Federal civilian emloyee who is covered because he performs service in a position described in subparagraphs (C) through (H) of section 210(a)(5) of the Act, which includes service as an employee of the legislative branch and service by an individual who elected to be covered under the Federal Employees' Retirement System Act of 1986 or the Foreign Service Pension System Act of 1986, shall generally be covered with respect to future Federal service.

Prior to the amendment of this section, the Act provided that Federal service performed for remuneration after 1983 is covered by Social Security if it is performed by a Federal official or employee in a position described in subparagraphs (C) through (H) of section 210(a)(5) of the Act. The law did not provided that individuals would retain Social Security coverage if they moved to other positions not subject to mandatory Social Security coverage.

The effect of this new provision is generally to eliminate loss of Social Security coverage for a Federal civilian employee, hired before 1984, who during his or her Federal career moves from a mandatorily covered position to one which is not otherwise mandatorily covered. We are adding the changes required by this section to § 404.1018(b).

Regulatory Procedures

The Department of Health and Human Services generally follows the Notice of Proposed Rulemaking and public comment procedures specified in the Administrative Procedure Act, 5 U.S.C. 553, in developing its regulations. However, that Act provides for exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures when, under the circumstances, they are impracticable,

unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures in this regulation because we are only updating our regulations to reflect nondiscretionary, self-executing statutory changes that involve no policy determinations on the part of the Department. Therefore, the opportunity for prior public comment is unnecessary and these amendments are being issued as final rules.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in negligible program and administrative costs or savings. It has little effect on the amount of benefits. Additionally, the costs are estimated to be less than $1 million and 30 workyears. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirement requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these regulations will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-age, Survivors, and Disability insurance, Social security.

Dated: March 28, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: May 10, 1990.

Louis W. Sullivan,

Secretary Health and Human Services.

For the reasons set out in the preamble, subpart I and subpart K of part 404 of chapter III of title 20, Code of Federal Regulations, are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

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

Authority: Secs. 205(a), (c)(1), (c)(2)(A), (c)(4), (c)(5), (c)(6), and (p), and 1102 of the Social Security Act; 42 U.S.C. 405(a), (c)(1), (c)(2)(A), (c)(4), (c)(5), (c)(6), and (p) and 1302.

2. In § 404.823, the introductory text is republished and paragraph (b) is revised to read as follows:

§ 404.823 Correction of the record of your earnings for work in the employ of the United States.

We may correct the record of your earnings to remove, reduce, or enter earnings for work in the employ of the United States only if—

* * * * *

(b) Any necessary determinations concerning the amount of remuneration paid for your work and the periods for which such remuneration was paid have been made as shown by—

(1) A tax return filed under section 3122 of the Internal Revenue (26 U.S.C. 3122); or

(2) A certification by the head of the Federal agency or instrumentality of which you have been an employee or his or her agent. A Federal instrumentality for these purposes includes a nonappropriated fund activity of the armed forces or Coast Guard.

3. The authority citation for subpart K continues to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 429(a), 430, 431, and 1302; Secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99–514; 100 Stat. 2505, 2779, and 2914; Sec. 9003 of Pub. L. 100–203; 101 Stat. 1330–287; Secs. 1011B(a)(23)(B) and 8013 of Pub. L. 100–647; 102 Stat. 3486 and 3789.

4. Section 404.1018 is amended by revising paragraph (a) introductory text and paragraph (b)(3), and by adding paragraph (b)(4) to read as follows:

§ 404.1018 Work by civilians for the United States Government or its instrumentalities—wages paid after 1983.

(a) *General.* If you are a civilian employee of the United States Government or an instrumentality of the United States, your employer will determine the amount of remuneration paid for your work and the periods in or for which such remuneration was paid. We will determine whether your employment is covered under Social Security, the periods of such covered employment, and whether remuneration paid for your work constitutes wages for purposes of Social Security. To make these determinations we will consider the date of your appointment to Federal service, your previous Federal employing agencies and positions (if any), whether you were covered under Social Security or a Federal civilian retirement system, and whether you made a timely election to join a retirement system established by the Federal Employees' Retirement System Act of 1986 or the Foreign Service Pension System Act of 1986. Using this information and the following rules, we will determine that your service is covered unless—

* * * * *

(b) * * *

(3) *Election to become subject to the Federal Employees' Retirement System or the Foreign Service Pension System.* Your service is covered if:

(i) You timely elect after June 30, 1987, under either the Federal Employees' Retirement System Act or the Central Intelligence Agency Retirement Act, to become subject to the Federal Employees Retirement System provided in 5 U.S.C. 8401 through 8479; or

(ii) You timely elect after June 30, 1987, to become subject to the Foreign Service Pension System provided in 22 U.S.C. 4071 through 4071(k).

(4) *Subsequent Federal civilian service.* If you perform Federal civilian service on or after November 10, 1988, which is described in paragraph (b)(1), (b)(2), or (b)(3) of this section you will continue to be covered for any subsequent Federal Civilian Service not excluded under paragraph (c) of this section.

* * * * *

[FR Doc. 90–13991 Filed 6–18–90; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF EDUCATION

34 CFR Part 333

RIN 1820–AA63

Technology, Educational Media, and Materials for the Handicapped Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR part 333 to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective June 19, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Office of Special Education Programs, U.S. Department of Education (Mary E. Switzer Building, room 3094), 400 Maryland Avenue SW., Washington, DC 20202–7240, Telephone: (202) 732–1114.

SUPPLEMENTARY INFORMATION: On March 3, 1988, final regulations implementing the 1986 amendments to the Education of the Handicapped Act (EHA) were published in the Federal Register (53 FR 6952–6956). The effective date of two sections of these regulations was delayed until information collection requirements contained in these sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has now approved the information collection requirements.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 333

Education, Education of the handicapped, Educational facilities, Government contracts.

(Catalog of Federal Domestic Assistance Number 84.180; Technology, Educational Media, and Material for the Handicapped)

Dated: June 12, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends part 333 of title 34 of the Code of Federal Regulations as follows:

PART 333—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR THE HANDICAPPED PROGRAM

1. The authority citation for part 333 continues to read as follows:

Authority: 20 U.S.C. 1461–1462; unless otherwise noted.

§§ 333.21 and 333.22 [Amended]

2. Sections 333.21 and 333.22 are amended by adding "(Approved by the Office of Management and Budget under control number 1820–0028)" following each of those sections.

[FR Doc. 90–14096 Filed 6–18–90; 8:45 am]

BILLING CODE 4000–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–375; RM–6846]

Radio Broadcasting Services; Bozeman, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260C1 to Bozeman, Montana, as that community's fourth local FM service, in response to a petition filed by Northern Sun Corporation. See 54 FR 37137, September 7, 1989. The coordinates for Channel 260C1 are 45–40–54 and 111–02–18.

DATES: Effective June 26, 1990; the window period for filing applications for Channel 260C1 at Bozeman will open on July 27, 1990, and close on August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–375, adopted May 29, 1990, and released June 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Montana by adding Channel 260C1 at Bozeman.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–14058 Filed 6–18–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–502; RM–6449]

Radio Broadcasting Services; Winnebago, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gary L. Violet, grants reconsideration of a Report and Order which dismissed his petition for rule making for failure to submit a continuing expression of interest in a proposed FM allotment. See 54 FR 29587, July 13, 1989. Since the requisite expression of interest has now been submitted, this Memorandum Opinion and Order substitutes Channel 289C2 for Channel 289A at Winnebago, Nebraska, and modifies the construction permit for Station KSUX accordingly. Channel 289C2 can be allotted to Winnebago in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) north to avoid a short-spacing to Station KFMT, Channel 288A, Fremont, Nebraska. The coordinates for this allotment are North Latitude 42–21–21 and West Longitude 96–29–01. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 88–502, adopted May 29, 1990, and released June 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by amending the entry for Winnebago, Nebraska, by removing Channel 289A and adding Channel 289C2.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–14059 Filed 6–18–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–284; RM–6492]

Radio Broadcasting Services; Greenwood, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C3 for Channel 292A at Greenwood, Arkansas, and modifies the Class A license for Station KZKZ–FM, as requested by KZ Radio, L.P., to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. See 54 FR 27041, June 27, 1989. Coordinates at the petitioner's specified site for Channel 292C3 at Greenwood are 35–10–45 and 94–11–00. With this action, the proceeding is terminated .

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–284, adopted June 1, 1990, and released June 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas, by removing Channel 292A and adding Channel 292C3 at Greenwood.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–14060 Filed 6–18–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–333; RM–6678]

Radio Broadcasting Services; Camarillo, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240B1 for Channel 240A at Camarillo, California, and modifies the license of Golden Bear Broadcasting, Inc., for Station KZTR–FM, as requested, to specify operation on the higher class channel, thereby providing a wider coverage area FM service. See 54 Fed. Reg. 33249, August 14, 1989. Coordinates for Channel 240B1 at Camarillo are 34–13–21 and 119–13–48. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–333, adopted June 1, 1990, and released June 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under California by removing Channel 240A and adding Channel 240B1 at Camarillo.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–14061 Filed 6–18–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–377; RM–6876]

Radio Broadcasting Services; Waite Park, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 279C3 for Channel 279A at Waite Park, Minnesota, in response to a petition filed by Ronald J. Linder, and modifies the construction permit for Station KXSS–FM, as requested, to specify operation on the higher powered channel. See 54 FR 37701, September 12, 1989. The coordinates for Channel 279C3 are 45–28–03 and 94–09–18.

EFFECTIVE DATES: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–377, adopted May 31, 1990, and released June 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Minnesota by removing Channel 279A

and adding Channel 279C3 at Waite Park.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-14062 Filed 6-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-383; RM-6917]

Radio Broadcasting Services; Cambridge, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 287C3 for Channel 288A at Cambridge, Minnesota, in response to a petition filed by Monday Media, Inc., and also modifies the license for Station KXLV, as requested, to specify operation on the higher class channel. See 54 FR 37701, September 12, 1989. Canadian concurrence has been obtained for Channel 287C3 at coordinates 45-26-40 and 93-11-45.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-383, adopted May 31, 1990, and released June 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Minnesota by removing Channel 288A and adding Channel 287C3 at Cambridge.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-14063 Filed 6-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-460; RM-6982]

Radio Broadcasting Services; Minneapolis, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 224A to Minneapolis, Kansas, as that community's first local broadcast service in response to a petition filed by Ruby J. Hoeflicker. See 54 FR 46274, November 2, 1989. The coordinates for Channel 224A are 39-07-30 and 97-42-18.

DATES: Effective July 30, 1990; the window period for filing applications will open on July 31, 1990, and close on August 30, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-460, adopted May 31, 1990, and released June 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Kansas by adding Channel 224A at Minneapolis.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-14064 Filed 6-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-23; RM-6616, RM-6748]

Radio Broadcasting Services; Springfield and Tallahassee, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240C2 for Channel 240A at Springfield, Florida, and modifies the license of Station WRBA(FM) to specify operation on Channel 240C2, at the request of Styles Broadcasting Company, Inc. *See* 54 FR 7452, February 21, 1989. In addition, this action substitutes Channel 241C2 for Channel 240A at Tallahassee, Florida, and modifies the license of Station WTMG(FM) to specify operation on Channel 241C2, at the request of Gary Burns, Inc. Channel 240C2 can be allotted to Springfield with a site restriction 5.0 kilometers (3.1 miles) north at Station WRBA's licensed site, at coordinates North Latitude 30-12-12 and West Longitude 85-36-57. Channel 241C2 can be allotted to Tallahassee with a site restriction 24.5 kilometers (15.2 miles) south at coordinates North Latitude 30-13-34 and West Longitude 84-15-00. With this action, this proceeding is terminated.

EFFECTIVE DATES: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-23, adopted May 30, 1990, and released June 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Florida, by adding Channel 240C2 and removing

Channel 240A at Springfield, and by adding Channel 241C2 and removing Channel 240A at Tallahassee.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-14065 Filed 6-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-476; RM-6969]

Radio Broadcasting Services; El Dorado, Kansas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 256C1 for Channel 256C2 at El Dorado, Kansas, in response to a petition filed by Gary L. Violet, and modifies the license for Station KBUZ(FM), as requested, to specify operation on the higher class channel, thereby providing a wider coverage FM service. See 54 FR 47371, November 14, 1989. The coordinates for Channel 256C1 are 37-57-00 and 96-59-00.

EFFECTIVE DATES: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-476, adopted May 29, 1990, and released June 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Kansas, is amended by amending the entry for El Dorado, by removing Channel 256C2 and adding Channel 256C1.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-14066 Filed 6-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 87-312; FCC 90-213]

Commercial Enterprises to be Licensed Directly in the Special Emergency Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In June 1988, the Commission released a Report and Order in this proceeding (53 FR 25607, July 8, 1988). In response to two petitions for reconsideration, the Commission adopted a Memorandum Opinion and Order reconsidering various aspects of the Report and Order. The Commission modified its decision regarding direct licensing of private carriers in the Special Emergency Radio Service (SERS). Private carriers will be permitted on one-way paging-only channels but no new licenses will be granted on two-way SERS channels. The Commission also decided to restore limited secondary use of eight SERS channels known as MED channels 1 through 8, thereby modifying its earlier decision to eliminate all secondary use of these channels.

EFFECTIVE DATE: July 19, 1990.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 87-312, adopted on June 1, 1990 and released June 12, 1990. The full text of the Order is available for inspection and copying during normal business hours in the FCC Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (room 5126), 2025 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Report and Order

1. June 1988, the Commission issued a Report and Order amending various rules applicable to the Special Emergency Radio Service (SERS), a private land mobile radio service available to medical services, rescue squads, and eight additional categories of eligible end users. The Report and Order took two major actions. First, it permitted private entrepreneurs or "private carriers" to be licensed directly in the SERS. Under this private carrier concept, entrepreneurs can build communications systems and offer service to eligible SERS end users. Second, the Report and Order eliminated all secondary use of eight channels known as MED channels 1 through 8, effective July 1, 1990. Previously these channels could be used on a primary basis for specific emergency medical applications and on a secondary basis for other communications, including those of an administrative nature.

2. In response to two August 1988 petitions from public safety organizations, the Commission issued a Memorandum Opinion and Order (MO&O) reconsidering its decision. The Commission modified its decision to license private carriers in the SERS, permitting new private carrier systems to be licensed on one-way paging-only channels but not permitting any new private carrier systems on two-way channels in the SERS. Those systems licensed prior to June 1, 1990 would be grandfathered and could continue operations. The Commission said that private carriers could significantly increase the efficiency and effectiveness of SERS paging operations. Although the Commission noted that private carriers could also offer some benefits on two-way channels, it found that a growing availability of private carriers may also encourage SERS end users to remain on these congested channels, possibly impeding future spectrum management efforts of a greater magnitude.

3. With respect to MED channels 1 through 8, the Commission adopted the suggestion of emergency medical organizations to restore limited secondary uses. The MO&O restores those secondary uses of MED channels 1 through 8 that are associated with the rendition or delivery of medical services. Administrative communications continue to be prohibited.

Ordering Clauses

4. Accordingly, it is ordered, pursuant to 47 CFR 1.429(i), that the Petition for Reconsideration filed on August 10, 1988, by Associated Public-Safety Communications Officers, Inc. and the Joint Petition for Reconsideration filed on August 9, 1988, by the International Municipal Signal Association, the International Association of Fire Chiefs, Inc., and the National Association of State EMS Directors, are granted to

the extent stated herein and are denied in all other respects.

5. Pursuant to sections 4(i), 303(r) and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 332(a), part 90 of the Commission's Rules, 47 CFR part 90, is amended as set forth below, effective July 19, 1990.

6. *It is further ordered* that this proceeding is Terminated.

List of Subjects in 47 CFR Part 90

Special emergency radio service, private carriers, radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix A

Part 90 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. Section 90.33 is revised to read as follows:

§ 90.33 Scope.

The Special Emergency Radio Service (SERS) covers the licensing of the radio communications of the following categories of activities: medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated places, communications standby facilities, and emergency repair of public communications facilities. Entities not meeting these eligibility criteria may also be licensed in the SERS solely to provide service to SERS eligibles on one-way paging-only frequencies below 800 MHz, *i.e.*, those frequencies with the assignment limitations appearing at § 90.53(b) (4) or (26). Private carrier systems licensed on other SERS channels prior to June 1, 1990, may continue to operate on those channels solely to provide radio communications service to SERS eligibles. Rules as to eligibility for licensing, permissible communications and classes and number of stations, and any special requirements as to each of these categories are set forth in the following sections. Frequencies available for these categories of services are shown in a separate frequency table.

§ 90.52 [Removed]

3. Section 90.52 is removed in its entirety.

4. Section 90.53 is amended by revising paragraphs (b) (19) and (20) to read as follows:

§ 90.53 Frequencies available.

* * * * *

(b) * * *

(19) This frequency is authorized for use under § 90.35(a) for operations in bio-medical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D, and G3E emissions may be authorized. This frequency may be utilized on a secondary basis for all other communications related to the delivery or rendition of medical services to the public consistent with § 90.35. Use of this frequency for administrative communications is not permitted.

(20) This frequency is authorized for use under § 90.35(a) for communications between medical facilities vehicles and personnel related to medical supervision and instruction for treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D, F3E and G3E emissions are authorized. This frequency may be utilized on a secondary basis for all other communications related to the delivery or rendition of medical services to the public consistent with § 90.35. Use of this frequency for administrative communications is not permitted.

* * * * *

[FR Doc. 90-14113 Filed 6-18-90; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 55, No. 118
Tuesday, June 19, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-90-14]

Petition for Rulemaking, Summary of Petitions Received: Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. 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: August 20, 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. 26132, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: 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 (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 13, 1990.

Debbie Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26132.

Petitioner: Gulfstream Aerospace Corporation.

Regulations Affected: 14 CFR 91.35.

Description of Petition: The petitioner proposes to amend § 91.35 to allow operators who do not hold an air carrier or commercial certificate to operate under the provisions of § 91.35(a) when the cockpit voice recorder (CVR) and/or flight recorder (FR) is temporarily removed for inspection, repair, modification, or replacement subject to specific conditions. Section 91.35(c) and 91.35(d)(2) require CVR's and FR's to be operated continuously from takeoff to landing roll completion. Under these rules, strict enforcement would compel an operator to land immediately upon loss of a CVR or FR, would not allow the aircraft to be ferried to repair or replace such equipment, would not permit an airworthiness flight check, or allow ferrying of a newly acquired aircraft for FR or CVR installation. However, § 91.35(a) allows air carrier or commercial operators to operate their aircraft without a CVR and/or FR under all four conditions (§ 91.35)(a)(1) through (a)(4)).

[FR Doc. 90-14101 Filed 6-18-90; 8:45 am]
BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3788-7]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove requests from the Michigan Department of Natural Resources (MDNR) for three revisions to the Michigan State Implementation Plan (SIP) for the Enamalum Corporation; Extrusion Painting; and General Aluminum Products, Inc. The revisions are being proposed for disapproval because they each seek compliance date extensions that are inconsistent with relevant portions of the Clean Air Act and USEPA policy, and because Michigan has not demonstrated that the extensions will not interfere with attainment and maintenance of the ozone standard or reasonable further progress (RFP).

DATES: Comments on these revisions and on the proposed USEPA action must be received by August 20, 1990.

ADDRESSES: Copies of these SIP revisions are available at the following addresses for review: (Please telephone Randolph O. Cano at (312) 886-6036, before visiting the Region V office.)

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

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 West Allegan, Lansing, Michigan 48909.

Comments on these proposed rules should be addressed to: (Please submit an original and five copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Randolph O. Cano, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On January 12, 1988, the Michigan Department of Natural Resources (MDNR) submitted to USEPA proposed site-specific SIP revisions in the form of Consent Orders. These proposed revisions are for Enamalum Corporation (Consent Order No. 7-1987) in Oakland County; Extrusion Painting (Consent Order No. 8-1987) in Wayne County,

and General Aluminum Products (Consent Order No. 9–1987) in Eaton County. These proposed revisions involve the use of a specialty type coating used primarily for architectural panels and components applied to monumental buildings. The proposed SIP revisions would allow until December 31, 1991, to comply with the SIP reasonably available control technology (RACT) limit of 3.5 pounds of volatile organic compounds (VOC) per gallon of coating, minus water, established in Michigan's Rule 336.1621, with an interim limit of 6.3 pounds of VOC per gallon of coating.

Michigan Rule 336.1621

Michigan's Rule 336.1621 establishes VOC emission limits for metal coating operations. It limits VOC emissions from extreme performance coatings to 3.5 pounds per gallon of coating, minus water, as applied, with a compliance date of December 31, 1983. USEPA approved rule 336.1621 as part of Michigan's part D SIP on July 26, 1982 (47 FR 32116). The emission limits in rule 336.1621 require at least the application of RACT as required by section 172(b) of the Clean Air Act (CAA).

Enamalum Corporation (No. 7–1987)

Enamalum Corporation is located in the City of Novi, County of Oakland, which is designated nonattainment for ozone and lacks a current, approved demonstration of attainment.[1]

Extrusion Painting (No. 8–1987)

Extrusion Painting is located in Garden City, County of Wayne, which is designated nonattainment for ozone and lacks a current, approved demonstration of attainment.

General Aluminum Products, Inc. (No. 9–1987)

General Aluminum Products, Inc. is located in the City of Charlotte, County of Eaton, which is in the Lansing metropolitan area, designated nonattainment for ozone and has an approved attainment demonstration.

USEPA's Evaluation of the Proposed SIP Revisions

USEPA has evaluated the proposed revisions for the Enamalum, Extrusion Painting, and General Aluminum Products companies with respect to USEPA's miscellaneous metal parts and products control techniques guideline. The coatings have a fluorocarbon coating resin base, designed to last for at least 20 years. These companies are the only companies with State approval to apply these coatings.

Consent Orders No. 7–1987, No. 8–1987, and No. 9–1987 allow the Enamalum, Extrusion Painting, and General Aluminum Products companies, respectively, until December 31, 1991, to comply with the SIP RACT limit of 3.5 pounds of VOC per gallon of coating, minus water, with an interim limit of 6.3 pounds of VOC per gallon of coating. After December 31, 1991, the VOC emissions from these metal coating operations shall not exceed 3.5 pounds per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

USEPA's criteria for evaluating source-specific compliance date extensions are contained in appendix A, of the proposed rulemaking for Georgia-Pacific published on November 8, 1988, at 53 FR 45103. In general, there are two tests that must be met for a source-specific compliance date extension to be approved. With respect to the first test, the State must demonstrate that the extension will not interfere with timely attainment and maintenance of the ozone standard and, where relevant, "reasonable further progress (RFP)" towards timely attainment. The demonstration my be based on a comparison between the margin for attainment predicted by the approved demonstration, taking into account the portion of the margin that may have already been used and the increase in emissions that would result under proposed extension. For areas currently lacking an approved demonstration or where the State or USEPA believes that there has been a substantial change in the VOC source or emission inventories, a complete attainment demonstration in support of the revison is required. With respect to the second test, time extensions must be consistent with the requirement that nonattainment area SIPS provide for implementation of all reasonably available control measures as expeditiously as practicable. For most sources, a time extension can be considered expeditious if it is within 3 years of the date that the source was first put on notice of the applicable requirement. Compliance date extensions for periods longer than these timeframes should be closely scrutinized to determine whether or not they are expeditious. This should include an examination of the compliance status of other surces nationally in the same VOC source category and the most expeditious means of compliance available, irrespective of the method proposed in the SIP revision.

Enamalum and Extrusion Painting are both located in areas which are designated nonattainment for ozone and which lack an approved demonstration of attainment. For these areas, MDNR should have submitted a demonstration equivalent to that required for USEPA approval of Michigan's ozone SIP. Because MDNR has not provided such a demonstration, the first test has not been met for Enamalum and Extrusion Painting.

General Aluminum Products is located in an area which is designated nonattainment for ozone and which has an approved ozone SIP. However, MDNR ahs not demonstrated that the approved attainment demonstration contains a sufficient growth margin to offset the excess emissions allowed by the extension. Therefore, the first test has not been met for General Aluminum Products as well.

MDNR also has not adquately demonstated that these three compliance schedules are expeditious. In order to demonstrate expeditiousness, MDNR should evaluate the feasibility of other control methods (*e.g.* add-on control) which may be more expeditious than development of complaint coatings.

In addition, the consent orders should specify the limit that will be in effect after December 31, 1991, if control is deemed not reasonbly available at that time. As currently written, the SIP revisions make the interim 6.3 pounds of VOC per gallon of coating limit enforceable only until December 31, 1991. Thereafter, the companies are subject to the 3.5 pounds of VOC limits, but only if air pollution control is reasonably available. If air pollution control is deemed not reasonbly available on December 31, 1991, no limits will be in effect after December 31, 1991. USEPA's technical support document (TSD) dated March 18, 1988, provides further details on specific language problems contained in the consent orders and suggests corrective language for specific paragraphs.

Regulatory Action

USEPA is proposing disapproval of the proposed SIP revisions (Consent Orders and Final Orders for the Enamalum Corporation (No. 7–1987); Extrusion Painting (No. 8–1987); and General Aluminum Products, Inc. (No. 9–1987) because MDNR has not demonstrated that the compliance

[1] On May 26, 1988, USEPA issued a SIP call under section 110(a)(2)(H) of the Clean Air Act which gave notification that the Ozone attainment demonstration for the Detroit area, which includes Oakland and Wayne Counties, is substantially inadequate to assure the attainment of the Ozone NAAQS. USEPA policy requires an approvable 1982 Ozone SIP attainment demonstration as a prerequisite to granting site-specific relaxations in nonattainment areas, such as Detroit.

schedules are as expeditious as practicable and that the extensions will not interfere with the attainment and maintenance of the ozone NAAQS or RFP.

A 60-day public comment period is being provided on this notice of proposed rulemaking. Public comments received on or before (August 20, 1990) will be considered in USEPA's final rulemaking action. All comments will be available for inspection during normal business hours at the Region V office listed at the beginning of this notice.

Nothing in this action should be construed as permitting or allowing or establishing a percedent for any future request revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environment factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that these SIP disapprovals will not have a significant economic impact on a substantial number of small entities, because they apply to specialty type coating operations for only three firms.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: June 4, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90–14163 Filed 6–18–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1307

RIN 0980–AA33

Program Performance Standards for Head Start Programs Serving Infants, Toddlers and Pregnant Women

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule requests comments from the public on a new part 1307 which contains requirements governing the operation of Head Start programs serving infants, toddlers and pregnant women. This action is being taken to provide standards so that Head Start programs which serve this target population can ensure the provision of quality services.

The proposed regulation requires any Head Start program serving infants, toddlers and pregnant women to develop and implement a performance standards plan that addresses the four Head Start program components: Education, health, social services, and parent involvement.

DATES: In order to be considered, comments on this Notice of Proposed Rulemaking (NPRM) must be received on or by August 20, 1990.

ADDRESSES: Please address comments to: Clennie H. Murphy, Jr., Acting Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013. It would be helpful if agencies and organizations would submit their comments in duplicate. Beginnnig 14 days after close of the comment period, comments will be available for public inspection in room 2224, 330 C Street, SW., Washington, DC 20201, Monday through Friday between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Madelyn Schultz, (202/245–0398).

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. The age range of children in Head Start programs is typically from age three (3) to the age of compulsory school attendance. However, Head Start Migrant programs additionally serve children from birth to three and Head Start Parent and Child Centers (PCCs) exclusively serve children from birth to three as well as pregnant women.

To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Head Start programs also are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs.

In fiscal year 1989, Head Start is serving 452,314 preschool children through a network of more than 1,287 grantees, including Migrant programs, and more than 592 delegate agencies which have an approved written agreement with the grantee to operate a Head Start program. Additionally, in 1989, 35 PCCs in 28 States are serving approximately 4,500 children from birth to three and their families.

While Head Start is targeted primarily on children whose families have income at or below the poverty line or are recipients of public assistance, the Head Start regulations permit up to 10 percent of the Head Start children in local programs to be from families who do not meet these criteria. Head Start also requires that a minimum of 10 percent of enrollment opportunities in each State be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a setting with their non-handicapped peers, and to receive needed special education and related services.

II. Program Description and Goals

The goals and philosophy of the Head Start program affecting all enrolled children including infants and toddlers and their families, are defined as follows:

A. The Head Start program is based on the premise that all children share certan needs, and that children of low-income families, in particular, can benefit from a comprehensive developmental program to meet those needs. The Head Start program approach is based on the philosophy that:

(1) A child can benefit most from a comprehensive, interdisciplinary program to foster development and remedy problems as expressed in a broad range of services; and

(2) Involvement of the child's entire family, as well as the community, is encouraged. The program should maximize the strengths and unique experiences of each child. The family, which is the principal influence on the child's development, should be direct participants in the program. Local communities are allowed latitude in developing creative program designs so long as they adhere to the basic goals, objectives and performance standards of a comprehensive program.

B. The overall goal of the Head Start program is to bring about a greater degree of social competence in children of low-income families. Social competence is defined as meaning the child's everyday effectiveness in dealing with both present environment and later responsibilities in school and life. Social competence takes into account the interrelatedness of cognitive and intellectual development, physical and mental health, nutritional needs, and other factors that are included in a

developmental approach to helping children achieve social competence. In order to accomplish this goal, Head Start objectives and performance standards provide for:

(1) The improvement of the child's health and physical abilities, including appropriate steps to correct present physical and mental problems and to enhance every child's access to an adequate diet; and the improvement of the family's attitude toward future health care and physical abilities;

(2) The encouragement of self-confidence, spontaneity, curiosity, and self-discipline which will assist in the development of the child's social and emotional health;

(3) The enhancement of the child's mental processes and skills with particular attention to conceptual and communication skills;

(4) The establishment of patterns and expectations of success for the child, thereby creating a climate of confidence for present and future learning efforts and overall development;

(5) An increase in the ability of the child and the family to relate to each other and to others; and

(6) The enhancement of the sense of dignity and self-worth within the child and his family.

III. Programs Serving Infants/Toddlers/Pregnant Women

The Head Start Bureau currently funds services to infants and toddlers primarily in two of its programs—the Parent and Child Center (PCC) program and the Head Start Migrant program.

The PCCs are comprehensive child development and family support programs established to support children from birth to three years of age and their families. In addition, they are required to serve pregnant women. PCCs were created based on strong evidence that a child's potential is shaped prenatally and in infancy. The PCC programs include but are not limited to the following elements:

- Activities for the infant and toddler designed to stimulate physical, cognitive and emotional development;
- Comprehensive health and nutrition care for pregnant women, infants/toddlers, the family as a whole and education in family health matters for the parents; and
- Adult basic education, vocational and self-help training opportunities.

The Head Start Migrant Program provides comprehensive Head Start services to children from birth to compulsory school age and their families. This age range (0 to school age) is limited in Head Start to the migrant population where both parents work long hours because of the nature of their employment, and where their need for developmentally appropriate services for their infants and toddlers is vital. Programs serving infants/toddlers and pregnant women are based on the following principles:

(1) Early experiences in the family affect the child's whole life;

(2) Supportive services to parents during the prenatal period and to parents and children during the first few years of life markedly enhance young children's learning, development, and overall social competence; and

(3) Involvement of the entire family, as well as the community, in the program produces meaningful results.

The goals of the infant/toddler program are to:

(1) Encourage optimal development of the child;

(2) Provide ongoing comprehensive health care and health nutrition education, including access to an adequate diet for the child and family;

(3) Help parents to become aware of the significance of the prenatal period and environment during years of infancy on the intellectual, language, social, emotional and physical development of the child;

(4) Increase the parents' knowledge of their children's development as well as assist them to be more effective parents and teachers of their children;

(5) Strengthen the family unit through providing opportunities for increasing parents' skills as homemakers and for pursuing education and economic opportunities;

(6) Help parents become more aware of available community resources and referral services; and

(7) Recognize and meet the needs of diverse ethnic and cultural groups.

In addition, the PCCs identify and prevent health problems in the unborn by providing prenatal health care (dental, medical, mental health and nutrition) and health education for the pregnant mother.

IV. Purpose of the Notice of Proposed Rulemaking

Head Start programs serving children ages three through compulsory school attendance have been governed by the Head Start Program Performance Standards (45 CFR part 1304) since 1975. Since that time, despite the growth of programs serving infants, toddlers and pregnant women, there have been no comparable standards for programs serving this population. With the advent of increased teenage parenting and single parent households, and with new knowledge gained from research on optimal care-giving to infants, we believe it is singularly important that standards of performance be published so that quality services are ensured. Under the authority of section 644(c) of the Head Start Act, this Notice of Proposed Rulemaking (NPRM) proposes to establish, in a new Part 1307, minimum standards for operating Head Start programs which serve infants, toddlers, and pregnant women. These standards will provide a mechanism for program review and aid in improving the quality of services provided.

V. Development of the Notice of Proposed Rulemaking

A. Background

For ease of use and consistency, ACYF used the same table of contents as found in part 1304, Head Start Performance Standards. In addition, we used current information from the fields of health care and early childhood education. Most particularly, we identified best practices endorsed as being developmentally appropriate for young children and their families by the following agencies and organizations: The United States Public Health Service, Division of Maternal and Child Health; the National Association For the Education of Young Children; the Child Development Associate Program; the American Academy of Pediatrics; and the Centers For Disease Control.

We believe performance standards for these programs are needed to ensure that infants, toddlers and pregnant women receive quality services. Currently, only Head Start program guidance documents are available for programs serving infants/toddlers and pregnant women. They include: (1) "Parent and Child Centers: A Guide for the Development of Parent and Child Centers" which was developed by the Head Start Bureau in 1967 to help establish PCCs as viable infant/toddler child care programs; and (2) Parent Child Center Program Guidelines, developed in 1981, which provided an update of the 1967 document. Therefore, we believe standards for these programs are needed and will be helpful to ensure that infants, toddlers and pregnant women receive quality services.

Following publication of the final rule, detailed guidance, which will not be mandatory, will be made available to further assist programs in the implementation of these regulations.

B. Specific Provisions of the Notice of Proposed Rulemaking

All requirements in this new Part that are not taken from 45 CFR part 1304 are based on information currently available from and endorsements of best practices by the agencies and professional organizations cited earlier.

Subpart A—General

Section 1307.1—Purpose and Scope

This proposed action explains that Head Start grantees and delegate

agencies which provide services to infants, toddlers and pregnant women will have to meet certain requirements of 45 CFR part 1304, where applicable, as well as part 1307.

Section 1307.2—Definitions

This section proposes definitions for certain key words that are used througout part 1307. They include such terms as "child," "infant," "toddler," "family," and "full-time participation in PCC programs." The definition of the term "full-time participation in PCC programs" is included because the PPC model, but not the Migrant program, calls for parents to participate in two ways. First, parents must agree to spend 50 percent of their time at the PCC to develop and practice parenting skills with their own child. Second, they must spend the remaining 50 percent of the time in adult development activities such as vocational training or continuing education. "Full-time participation in PCC programs" is proposed to be defined as 100 percent of the period of time specified for attendance by the PCC. Since PCCs vary as to their hours and patterns of operations, no specific time periods are included in the definition. Other definitions, such as "handicapped children," are taken from § 1304.1–2 of this chapter.

Sections 1307.3 and 1307.4—Performance Standards Plan Development, Implementation and Enforcement

In order to assure quality services, these sections propose to require that each Head Start grantee and delegate agency develop and implement a written performance standards plan which meets or exceeds performance standards in the areas of education, health services, social services, parent involvement and facilities. There is also a proposed requirement that teachers be qualified. Within two years following the date that this regulation becomes final, each teacher must have obtained a Child Development Associate (CDA) credential to serve infants and toddlers or other certification in child development which includes at least 15 clock hours (as opposed to credit hours) of course work in the growth and development of children from 0 to 36 months. Since CDA infant/toddler training has been available for more than five years, we believe that sufficient time is alloted under this requirement for programs to ensure that their teachers obtain a CDA or comparable certification.

However, the Department encourages comments on this proposal. We are particularly interested in whether the requirement for a CDA credential for all teachers within two-years will create barriers to employment for members of the community. We are also interested in comments as to any hardship this requirement may cause the Head Start grantee in the hiring of staff. Finally, in view of the fact that other preschool and infant/toddler programs are also being established in the community, we need to better understand the impact this proposed requirement will have on grantees' ability to hire persons with the proposed qualification standard.

This NPRM does not require that teachers' aides obtain a CDA; however, the Head Start grantee must provide 40 hours of pre-service training to all teachers' aides. This pre-service traininig, modeled after the successful aide training protocol developed by the U.S. Army Family Support Child Care Program, must focus on infants and toddlers and include such areas as orientation to Head Start, program goals, services, regulations, emergency procedures, how to relate to parents, child growth and development principles and safety training. There is also a requirement for aides to have 12 hours of practical experience interacting with the target population while under the direct supervision of qualified professional staff. In addition, § 1307.4 requires that agencies must comply with § 1304.1–5, Performance Standards Implementation and Enforcement.

Section 1307.5—Services to Disabled Children

A provision has been included in this proposed rule, in order to assure that disabled children in Infant/Toddler programs receive services appropriate to their needs. We propose to require in § 1307.5, that grantees who serve disabled infants and toddlers work with the State agency responsible for implementing Public Law 99–457, Education of the Handicapped Act Amendments of 1986, to assure provision of and coordinated delivery of services for these children.

Subpart B—Education Services Objectives and Performance Standards

Sections 1307.14, 1307.15 and 1307.16—Education Services Plan Objectives, Content and Implementation

These proposed sections include requirements for the education component to plan for and provide services to infants and toddlers. They require agencies to meet the provisions of § 1304.2–1 and § 1304.2–2 and provide an optimum learning environment which will foster cognitive development through problem solving, exploration, communication and physical development. These sections require agencies to meet the individual needs of the child.

These sections further require that in PCC home-based and center-based programs, but not in Migrant programs, parents must participate full-time (100 percent of the time specified for their attendance by the PCC). Since the PCC model calls for parents to interact with their children and develop parenting skills by practicing new techniques with their own child, parents or those adults who would serve in a parenting role must agree to spend 50 percent of their time at the PCC enhancing the parent-child relationship through supervised parent-child interactions and through training in child growth and development. The balance of the time is to be spent in adult development activities such as vocational training or education, training for a General Equivalency Diploma, job development and literacy training.

Specific adult/child ratios and group size limitations are required for all infant/toddler programs. The education services component must be reflective of the different stages of development of the children and the program must facilitate continuity of services as the children move to other programs in the community.

The specific adult/child ratios proposed in § 1307.16(e) are adapted from National Association of the Education of Young Children (NAEYC) standards and require that at least one qualified teacher be included among the adults serving each group of children in order to ensure quality programming.

Research reflects that group size has a profound effect on the development of children under three (3) years of age. Findings from the National Day Care Infant/Toddler Study (ABT Associates, 1979), a substudy of the National Day Care Study, reveal a high correlation between group size and behavior of children under age three (3) contingent upon the frequency and quality of their classroom interaction with adults. It was found that caregivers who work with large groups of younger children generally spend more time on administrative tasks and less time on social interaction and language development to the detriment of the children's growth and development. Larger group size is also a significant correlate of apathy and/or higher frequencies of distress in infants and potentially harmful behaviors on the part of toddlers. The study endorsed low adult/child ratios for programs serving

infants and toddlers to encourage socially acceptable behaviors and positive self-images.

Because of the particular vulnerability of the children served by PCCs and by Migrant programs, and because of the comprehensive and developmental nature of the Head Start program, we believe we are justified in proposing standards in the more conservative range of acceptable practice identified in the research.

Subpart C—Health Services Objectives and Performance Standards

Sections 1307.26 through 1307.32 address the following areas: Health services objectives, advisory committee, screenings, medical and dental examinations and treatments, disease prevention, records and health education.

These sections incorporate requirements of part 1304 applicable to infant and toddler programs. In addition, these sections identify specific aspects of health care unique to children from birth to three and, in the instance of PCCs, pregnant women.

In § 1307.26, the major health objectives of programs serving infants/toddlers and their families and pregnant women focus on the provision of comprehensive health services which include a broad range of medical and dental services to assist optimum growth and development of the children and, in the case of PCCs, effective prenatal care for the pregnant women enrolled in the program.

One requirement contained in § 1307.28 calls for the provision of or arrangement for medical examinations administered by a licensed physician or other health professional in accordance with State law. Infants and toddlers must receive complete physical examinations, totally unclothed, at ages 1 month, 2 months, 4 months, 6 months, 12 months, 15 months, 18 months, 24 months and 36 months. If a child is of low birth weight or has any other high risk condition, the number of physical examinations should be increased as needed.

We are proposing this requirement based on accepted pediatric practice for unclothed examinations at this frequency. This practice provides the opportunity for the physician (or other health professional) to identify health problems in an infant's and toddler's skeletal and muscular development as well as to check for such problems as lesions and rashes. Infants and toddlers need more frequent examinations because they are in a period of rapid growth.

PCCs serving pregnant women must arrange for prenatal care through delivery and post partum for those women who are not receiving such care.

In § 1307.29, we propose that Head Start funds for health services must not be used unless health services are not available through other community agencies and/or resources.

Sections 1307.33 and 1307.34—Mental Health Objectives and Mental Health Services

These sections propose to require that all programs serving infants and toddlers provide for prevention of, early identification of, and early intervention in problems that interfere with a child's feelings of well-being and normal growth and development.

Proposed mental health services include those applicable services cited in 45 CFR 1304.3–8.

Sections 1307.35 and 1307.36—Nutrition Objectives and Nutrition Services

In order to promote sound physical, social and emotional growth and development, these sections propose to require implementation of age appropriate portions of § 1304.3–9 and § 1304.3–10; that the daily nutritional needs of infants, toddlers and pregnant women be met; and that individual differences and cultural patterns be recognized.

In PCCs serving pregnant women, assistance must be given to meet nutritional needs and education provided concerning the effect of nutrition on the growing fetus.

In § 1307.36(b)(2), we propose that Head Start staff not introduce new foods to infants younger than six (6) months unless the parent or health practitioner agrees. This was done to prevent giving foods to infants that their systems cannot easily tolerate.

We also propose to require in § 1307.36(b)(5) that in home-based programs, home visitors must provide a minimum of one nutritious food preparation activity a month. This activity will provide an opportunity to further teach parents ways of meeting the nutritional needs of their infants and toddlers.

Subpart D—Social Services Objectives and Performance Standards

Section 1307.47 Social Services Objectives and Performance Standards

These proposed regulations require compliance with 45 CFR 1304.4–1 and 1304.4–2. These requirements must be adapted to meet the unique differences in programs serving infants and toddlers as well as (in the case of PCCs) pregnant women. In addition, these proposed regulations require compliance with Appendix A to § 1301.31 regarding the identification and reporting of child abuse. They also provide for the establishment of a climate that enhances coordination, cooperation and open communication between parents and staff.

Subpart E—Parent Involvement Objectives and Performance Standards

Sections 1307.36–1307.67 Performance Standards for Parent Involvement

These sections include requirements for objectives and performance standards; parent participation; and communication among program management, program staff and parents and area residents. They also reiterate the requirement for parent participation as discussed in §§ 1307.14, 1307.15 and 1307.16.

They also require compliance with 45 CFR 1304.5–1 through 5–5 relating to Parent Involvement, including appendix B.

Subpart F—Center-Based Programs—Facility Standards

Section 1307.68 Center-Based Programs: Facility Standards

Section 1307.68 incorporates those facility standards for center-based programs included in 45 CFR 1304.2–3. In addition, we propose that programs serving infants and toddlers must provide cribs, feeding tables and high chairs and must stock only those developmentally appropriate toys which are safe for children from birth to three years.

VI. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that these regulations are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For

each rule with a "significant economic impact on a substantial number of small entities" we prepare an analysis describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small goverment entities.

While this rule would affect small entities, it is not substantial, and some grantees already meet some of the proposed requirements based on Head Start guidance. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed or final rule. This proposed rule contains recordkeeping requirements in §§ 1307.3 and 1307.31 which will be submitted to OMB for its review and approval. A copy of this NPRM also will be sent to all Head Start grantees and delegate agencies.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose, whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3028, Washington, DC 205403, ATTN: Desk Office for HDS.

List of Subjects in 45 CFR Part 1307

Head Start, Education of disadvantaged, Grant programs/Social services, Infants/toddlers, Handicapped, Preschool education.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: October 23, 1989.

Donna N. Givens,

Deputy Assistant Secretary for Human Development Services.

Approved: February 13, 1990.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, a new part 1307 is proposed to be added to title 45, chapter XIII, subchapter B of the Code of Federal Regulations as follows:

PART 1307—PROGRAM PERFORMANCE STANDARDS FOR HEAD START PROGRAMS SERVING INFANTS, TODDLERS AND PREGNANT WOMEN

Subpart A—General

Sec.

1307.1 Purpose and scope.
1307.2 Definitions.
1307.3 Performance standards plan development.
1307.4 Performance standards implementation and enforcement.
1307.5 Services to disabled children.

Subpart B—Education Services Objectives and Performance Standards

1307.14 Education services objectives.
1307.15 Education services plan: Content.
1307.16 Education services plan: Implementation.

Subpart C—Health Services Objectives and Performance Standards

1307.26 Health services general objectives.
1307.27 Health services advisory committee.
1307.28 Medical and dental history, screening and examinations.
1307.29 Medical and dental treatment.
1307.30 Procedures for disease prevention.
1307.31 Medical and dental records.
1307.32 Health education.
1307.33 Mental health objectives.
1307.34 Mental health services.
1307.35 Nutrition objectives.
1307.36 Nutrition services.

Subpart D—Social Services Objectives and Performance Standards

1307.47 Social Services.

Subpart E—Parent Involvement Objectives and Performance Standards

1307.63 Parent involvement objectives.
1307.64 Parent involvement plan: Parent participation
1307.65 Parent involvement plan: Enhancing development of parenting skills and personal growth.
1307.66 Parent involvement plan: Communication among program management, program staff, and parents.
1307.67 Parent involvement plan: Parents, area residents and the program.

Subpart F—Center-Based Programs—Facility Standards

1307.68 Center-based programs: Facility standards.

Authority: 42 U.S.C. 9839.

Subpart A—General

§ 1307.1 Purpose and scope.

(a) This part contains the standards that Head Start Parent and Child Center (PCC) grantees and Migrant Program grantees must meet. Compliance with these performance standards is required as a condition of Federal Head Start funding.

(b) Head Start PCC grantees and Migrant Program grantees also must meet certain requirements in Part 1304 of this chapter.

§ 1307.2 Definitions.

As used in this part:

(a) All of the definitions contained in § 1304.1–2 of this chapter apply to this part.

(b) The term "child" or "children" means a child or children from birth to 36 months of age; an "infant" means a child from birth through 12 months; and a "toddler" means a child from 13 to 36 months.

(c) The term "family" means all persons living in the same household who are: (1) Supported by the income of the parent(s) or guardian(s) of the child enrolling in a program; and (2) related to the parent(s) or guardian(s) by blood, marriage, adoption or foster placement.

(d) The term "upon entry into the program" means the child's first day of attendance in center programs and the first home visit of the home visitor in home-based programs.

(e) The term "full-time participation in PCC programs" means that in PCC home-based and center-based programs, but not in the Migrant programs, parents must participate 100 percent of the time specified for their attendance by the PCC. The parent (or person acting in a parental role) must agree to spend 50 percent of the specified attendance time enhancing the parent-child relationship through parent-child interaction and through training in child growth and development. The remaining 50 percent of the time will be spent in adult development activities such as vocational training, literacy, parent education.

§ 1307.3 Performance standards plan development.

For programs serving infants/toddlers, each Head Start grantee and delegate agency must develop a written performance standards plan or modify its current plans in accordance with §1304.1–4 of this chapter in order to meet or exceed each of the performance standards prescribed in subparts B, C, D, E, and F of this part, herein after referred to as "plan" or "performance standards plan."

§ 1307.4 Performance standards implementation and enforcement.

(a) Current Head Start grantees and delegate agencies will have two years to comply with the staff qualification requirement in paragraph (c) of this section and 180 days to comply with subparts B, C, D, E, and F of this part. New grantees submitting applications 90 days after publication of the final rule must comply with or exceed the

performance standards prescribed in subparts B, C, D, E, and F of this part.

(b) Head Start programs serving infants and toddlers must meet State and local licensing regulations (if they exist) for child care programs.

(c) Within two years of the effective date of these regulations, teachers must have a Child Development Associate (CDA) credential in the infant and toddler area or other certification in child development which includes at least 15 clock hours (as opposed to credit hours) of course work encompassing growth and development of children from birth through 36 months. Head Start programs serving infants and toddlers must provide sufficient teachers and teachers' aides with appropriate qualifications and training to meet the needs and promote the development of young children, including handicapped children. Staff also must be provided with regular opportunities to improve skills in working with infants, toddlers, pregnant women and families.

(d) Head Start grantees serving infants and toddlers must provide a minimum of 40 hours of preservice training and 12 hours of practical experience to teachers' aides. The training must be arranged and scheduled in ways to maximize adult learning and provide opportunities to observe staff and children. It must include the following:

(1) Eight hours of program observation to acquaint the applicant with the children and staff and the program's daily activities;

(2) Eight hours of program orientation by the Director and other appropriate staff, including overview and discussion regarding program goals and services, regulations, emergency procedures, relating to parents and children, and training requirements;

(3) Eight hours of child growth and development principles;

(4) Sixteen hours of safety training which addresses accident prevention, wounds and emergency procedures; cardiopulmonary resuscitation; communicable diseases and child nutrition; and

(5) Twelve hours of practical experience (following the above described 40 hours of training) interacting with the target population while under direct supervision of qualified professional staff.

(e) Grantees must establish and maintain a safe and healthy environment appropriate to the age and development of the children.

(f) The requirements and procedures in § 1304.1–5 are also applicable to this part.

§ 1307.5 Services to disabled children.

With respect to services for disabled children who may be served in the Head Start Infant/Toddler programs, the grantee must work with the State agency responsible for implementing Public Law 99–457, Education of the Handicapped Act Amendments of 1986, to assure provision of and coordinated delivery of services for those children.

Subpart B—Education Services Objectives and Performance Standards

§ 1307.14 Education services objectives.

In addition to the objectives contained in § 1304.2–1, the following objectives for the education services component must be met:

(a) Develop and implement a program which is individualized to provide opportunities appropriate for the developmental level of each child;

(b) Provide continuity of services for children as they move to other programs in the community; and

(c) Provide a safe physical environment which fosters optimal growth and development.

§ 1307.15 Education services plan: Content.

(a) For all programs serving infants and toddlers, the plan must describe age appropriate strategies for meeting their special cognitive needs.

(b) The plan must describe methods for assisting parents in understanding and using alternative ways to foster learning and development of their children.

(c) The education services component of the plan must include all activities cited in § 1304.2–2 of this chapter.

§ 1307.16 Education services plan: Implementation.

(a) In implementing the educational services plan, grantees and delegates agencies must meet all requirements of § 1304.2–2 of this chapter. The plan must provide for a learning environment and for varied experiences which will help children develop socially, intellectually, physically and emotionally and will enhance the parents' ability to help children develop. For home-based programs, the home visit must enhance the parent's ability to use the home and the surroundings as a learning environment of the child.

(b) In programs serving infants and toddlers, parents must be advised on how to foster the child's intellectual development at different levels of development.

(c) In home-based programs, Head Start programs must encourage parents to use materials found in the home and the surrounding community to foster the physical development of the child. In programs serving infants and toddlers, parents must be taught unique and age appropriate ways to foster the child's physical development.

(d) In PCCs, parents or those adults who serve in a parenting role must participate full-time in the program, whether it is home-based or center-based. Parents must spend 50 percent of the time specified by the program to enhance the parent-child relationship through supervised parent-child interactions and through training in child growth and development. During the remaining 50 percent of the time, the parent must participate in activities to enhance personal growth. During the latter period, when the parent may be involved in continuing education, vocational training or other related activities, the child may remain in the center. In home-based programs, parents must be present during the entire home visit period.

(e) Infant and toddler programs must limit the number of children in a group to facilitate adult-child interaction and constructive activity among children. Such programs must have sufficient number of staff with primary responsibility for individual children so that the children learn to feel secure and trust the caregiver to provide frequent personal contact, meaningful learning activities, supervision, and immediate care as needed. Each group of children must be supervised by at least one qualified teacher (see 1307.4(c)). Minimum adult-child ratios and maximum group sizes for infant and toddler programs are as follows:

MINIMUM ADULT-CHILD RATIOS WITHIN GROUP SIZES [1]

Age of children	Group size [2]				
	Up to 6	8	10	12	14
Birth–12 months	1:3	1:4			
13–24 months	1:3	1:4	[3] 1:5	1:4	([3])
25–36 months		1:4	1:5	1:6	([3])

[1] Adapted from the National Association for the Education of Young Children, "Accreditation Criteria and Procedures of the National Academy of Early Childhood Programs," 1984.

[2] Refers to number of children in the group. Group sizes larger than those indicated are not permitted.

[3] Smaller group sizes and lower adult-child ratios are preferred.

(f) Multi-age grouping is both permissible and desirable. When no infants are included, the adult-child ratios and group size requirements shall be based on the age of the majority of the children in the group. When infants

are included, ratios and group sizes for infants must be maintained.

(g) The educational services component staff must be 18 years of age or older, with appropriate qualifications and training as set forth in § 1307.4(c) and (d) and demonstrate the appropriate personal characteristics for working with young children, such as warmth, patience and good listening skills.

(h) The education services component must provide for the integration of other Head Start components into the daily education services program.

(i) The education services component must implement a program which involves parents in appropriate developmental activities in order to enhance their role as the principal influence on the child's education and development.

(j) Infant/toddler programs must include activities that increase parents' potential knowledge, understanding, skills and experience in child growth and development, including training in child development, observation of growth and development of their children in the home environment, and identification and handling of special developmental needs and activities that can be used in the home to reinforce the learning and development of their children. For pregnant women in PCC programs, training must also include information on fetal development.

(k) The infant/toddler programs must ensure that there is continuity between the program and the home through regular communication with parents, parent participation in planning the education program and in center/home activities, and no less than two home visits per program year by members of the education staff.

(l) The program must facilitate continuity of services to children as they move to other programs in the community.

Subpart C—Health Services Objectives and Performance Standards

§ 1307.26 Health services general objectives.

(a) The general objectives of the health services component of Head Start programs serving infants and toddlers are to:

(1) Provide a comprehensive health services program (which includes a broad range of medical, dental, mental health and nutrition services to infants and toddlers, including handicapped children) to promote the child's physical, emotional, cognitive and social development which will aid in achieving an overall goal of social competence.

(2) Promote preventive health services continually and provide early intervention in the case of suspected health problems in infants and toddlers.

(b) The general objectives of the health services component include, in addition to the provision of health services for infants and toddlers, the arrangement of health services for pregnant women enrolled in the PCC program.

(c) The requirements of § 1304.3–1 (c) regarding health education and assisting the child's family to obtain health care from community resources is also applicable.

§ 1307.27 Health services advisory committee.

Grantees and delegate agencies must meet the requirements of § 1304.3–2 of this chapter.

§ 1307.28 Medical and dental history, screening and examination.

(a) The performance plan must describe strategies that will be implemented to obtain, for each child enrolled in an infant/toddler program, a complete medical, dental and developmental history; a thorough health screening; and medical and dental examinations.

(b) The plan must provide also for advance written authorization by the parent or guardian for all health services under this subpart.

(c) Health screenings must be completed by a registered nurse, licensed practical nurse or other health professional and must include those activities indentified in § 1304.3–3(b) of this chapter.

(d) Medical examinations for infants and toddlers must:

(1) Include a complete physical examination, totally unclothed, at ages 1 month, 2 months, 4 months, 6 months, 12 months, 15 months, 18 months, 24 months and 36 months, unless a child is of low birth weight or has any other "high risk" condition warranting additional examinations as needed;

(2) Be performed by a licensed physician or designee, such as a nurse practitioner or other health professional in accordance with State law; and

(3) Pay particular attention to overall developmental progress, any problems or potential problems noted in the health screening, and to specific systems or regions of the body of developmental importance in this age group, e.g., skin, eye, ear, nose, thoat, heart, lungs and groin (inguinal) area.

(e) PCCs serving pregnant women must arrange for prenatal care through delivery and postpartum for the pregnant women who are not under care, using community resources.

§ 1307.29 Medical and dental treatment.

(a) The plan must provide for treatment and follow-up which includes obtaining or arranging for treatment of all health problems detected.

(b) Head Start funds must be used to provide medical and dental treatment only when no other source of funding is available. Where funding for medical and dental treatment is provided by non-Head Start funding sources, the infant/toddler program must document that the services have been provided, on what date, and by whom.

(c) The infant/toddler program must provide or arrange for the completion of all recommended immunizations—diptheria, pertussis, tetanus, polio, measles, German measles, and mumps.

(d) The infant/toddler program must obtain or arrange for basic dental care services (when applicable) as listed in § 1304.3–4 of this chapter.

(e) All infant/toddler programs must have written procedures for medical and dental emergencies.

§ 1307.30 Procedures for disease prevention.

(a) Each Head Start program serving infants and toddlers must establish procedures for the prevention of contagious diseases to protect the health of children and staff.

(b) Classroom procedures must address proper handwashing, toy cleaning, sanitary diapering and toileting, and identifying and responding to sick children.

(c) All staff must receive training on how diseases are spread and on established prevention procedures and policies.

(d) The program must inform parents of all prevention procedures used in the program, policies regarding immunization requirements, and responses to sick children. Parents must also be encouraged to inform program staff when their children have been exposed to contagious diseases.

(e) In accordance with local and State health regulations, program and volunteer staff must have initial health examinations, periodic check-ups, and be free from communicable diseases.

§ 1307.31 Medical and dental records.

All programs serving infants and toddlers must meet the requirements of § 1304.3–5 of this chapter.

§ 1307.32 Health education.

(a) The performance plan must meet the requirements of § 1304.3–6 of this chapter.

(b) The performance plan must provide for an organized health education program regarding services to infants and toddlers for program staff, parents, children (where applicable) and pregnant women in PCC programs.

(c) Pregnant women served by the PCC program must receive information about all available health resources that are specific to their needs.

§ 1307.33 Mental health objectives.

The mental health objectives of the health services component in infant/toddler programs must include:

(a) Those found in § 1304.3–7 (a) through (f) of this chapter;

(b) Encouragement of a classroom and home environment which enhances feelings of self-esteem for children and parents;

(c) A supportive social and emotional climate which enhances children's understanding of themselves as individuals and, in relation to others, gives children many opportunities for success through program activities; and

(d) An environment of acceptance which helps each child build ethnic pride, develop a positive self-concept, enhance his or her individual strengths, and develop facility in social relationships

§ 1307.34 Mental health services.

The performance plan must include those mental health related items identified in § 1304.3–8 of this chapter.

§ 1307.35 Nutrition objectives.

(a) The objectives of the nutrition part of the health services component of the program serving infants/toddlers are those found in § 1304.3–9 of this chapter.

(b) For home-based programs, the home visitors will use the time for assisting with the preparation of meals (especially the family meal) as a teaching opportunity to convey information on nutritious foods, quantity and quality of foods, attractive ways to serve food, and low cost menus.

§ 1307.36 Nutrition services.

(a) Where age appropriate, all grantees and delegate agencies must meet the requirements of § 1304.3–10 of this chapter.

(b) The nutrition component of the plan must provide that:

(1) Because of the nutritional vulnerability of infants, feeding must be geared to meet the needs of each infant;

(2) Staff must not introduce new food to infants younger than six months unless the health practitioner or the parent advises that this can occur;

(3) As infants and toddlers become acquainted with their environment, including food, staff must encourage them to explore and handle their food as well as to try to feed themselves. This is a vital part of a baby's development. In addition, the program must be informed by the family of any food allergies of individual children and avoid serving those foods to the children who are allergic to them;

(4) In PCCs serving pregnant women, staff assistance and referral to appropriate community resources must be given to pregnant women to help meet their nutritional needs, and education concerning the effect of nutrition on the growing fetus must also be provided; and

(5) In home-based programs for infants and toddlers, home visitors must provide a minimum of one nutritious food preparation activity a month.

Subpart D—Social Services Objectives and Performance Standards

§ 1307.47 Social Services.

(a) Head Start grantees and delegate agencies must meet the social services objectives and requirements of § 1304.4–1 and § 1304.4–2 of this chapter in providing services to infants, toddlers and their families as well as pregnant women.

(b) The social services component of the performance plan must:

(1) Include procedures for establishing a climate that enhances coordination, cooperation and open communication and which insures confidentiality between parents and staff; and

(2) Include procedures to address the identification and reporting of child abuse and neglect as found in Appendix A of § 1301.31.

Subpart E—Parent Involvement Objectives and Performance Standards

§ 1307.63 Parent involvement objectives.

The objectives of the parent involvement plan for programs serving infants and toddlers include those cited at § 1304.5–1 of this chapter.

§ 1307.64 Parent involvement plan: Parent participation.

In programs serving infants and toddlers, as a condition for receiving financial assistance, the performance plan must describe in detail the implementation of the basic parent participation policy of the Head Start programs as contained in ¶ 1304, Appendix B, of this chapter. In addition, for PCCs, parents must participate on a full-time basis as described in § 1307.2(i) of this part.

§ 1307.65 Parent involvement plan: Enhancing development of parenting skills and personal growth.

The performance plan must provide methods and opportunities for involving parents as well as pregnant women (in PCC programs) in those activities described in § 1304.5–3 of this chapter.

§ 1307.66 Parent involvement plan: Communication among program management, program staff and parents.

The plan must meet the requirements of § 1304.5–4 of this chapter.

§ 1307.67 Parent involvement plan: Parents, area residents and the program.

The plan must meet the requirements of § 1304.5–5 of this chapter.

Subpart F—Center-Based Programs—Facility Standards

§ 1307.68 Center-based programs: Facility standards.

(a) For center-based programs, space, light, ventilation, heat and other physical arrangements must meet the health, safety and developmental needs of the children.

(b) To comply with this standard, the infant/toddler program must meet all applicable requirements identified in § 1304.2–3 of this chapter as well as:

(1) Provide cribs, feeding tables and high chairs for infants and toddlers;

(2) Maintain safe, durable materials and equipment both indoors and outdoors, and keep them in good condition. Such materials and equipment must meet all applicable United States Consumer Product Safety Standards;

(3) Stock only those infant and toddler toys large enough to prevent swallowing or choking;

(4) Position cushioning materials, such as mats or sand, under climbers, slides and swings; and

(5) Securely anchor climbing equipment, swings and large pieces of furniture.

[FR Doc. 90–14152 Filed 6–18–90; 8:45 am]
BILLING CODE 4130–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 90–132; DA 90–779]

Communications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Propose rule; extension of time.

SUMMARY: The Common Carrier Bureau of the Federal Communications Commission released an order extending the time in which to file comments and replies in response to its Notice of Proposed Rulemaking (In the Matter of Competition in the Interstate Interexchange Marketplace, CC Docket No. 90–132, 55 FR 18007 (1990)). In its

NPRM, the Commission established a June 12, 1990, deadline for comments and a July 12, 1990, deadline for replies. On May 17, 1990, the Competitive Telecommunications Association (CompTel) and thirteen of its member companies filed a joint motion seeking a 45-day extension of the deadline for filing comments. The Commission granted a 15-day extension, but denied the request for a 45-day extension.

DATES: Comments must be filed on or before June 27, 1990, and replies must be filed on or before July 27, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Competition in the Interstate Interexchange Marketplace.

Adopted: May 31, 1990.
Released: May 31, 1990.

By the Chief, Common Carrier Bureau.

1. On May 17, 1990, the Competitive Telecommunications Association (CompTel) and thirteen of its member companies [1] filed a joint motion seeking a 45-day extension of the deadline for filing comments in response to the Notice of Proposed Rulemaking (Notice) in this proceeding.[2] CompTel claims that the requested extension is necessary in light of the importance and complexity of the issues presented by the Notice. In addition, it states that a 45-day extension would enable it to coordinate with member companies and file one collective set of comments on behalf of these companies. CompTel claims that the extension is critical to its effective participation in this proceeding and that no party would be adversely affected by this extension.

2. AT&T opposes CompTel's request for extension. It disputes CompTel's claim that no party would be adversely affected by the extension, asserting that an extension would perpetuate the substantial and undue competitive disadvantage it now faces in the marketplace. In addition, it denies that the issues raised in the Notice are complex or new, noting that public information about this proceeding was available as early as November, 1989, and that the Notice's tentative conclusions were announced on March 8, 1990—thirty-five days before the comment cycle began running.

3. Although it is the policy of the Commission that extensions of time shall not be routinely granted,[3] we believe, in light of the importance of the issues presented in this proceeding, that the public interest would be served by affording CompTel some additional time in which to prepare its comments. At the same time, however, we believe that a forty-five day extension of time is neither necessary nor reasonable. The Notice already provides for a sixty-day comment period, which is longer than the comment period for most Commission proceedings. In addition, as AT&T notes, public information about this proceeding was available to CompTel several months before the Notice was released, and the basic outlines of the Notice, including our tentative conclusions, were announced with the adoption of the Notice thirty-five days prior to the running of the comment cycle. Under the circumstances, a fifteen-day extension of time would appropriately balance CompTel's need for additional time with the public interest in avoiding unnecessary and undue delay in the resolution of the important issues raised in this proceeding.

4. Accordingly, *it is ordered,* pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (j) and 155 (c), and authority delegated thereunder pursuant to sections 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, that the motion of CompTel for extension of time is granted in part and denied in part. The deadline for filing comments is extended to June 27, 1990. Replies must be filed by July 27, 1990.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 90–14068 Filed 6–18–90; 8:45 am]

BILLING CODE 6712-01-M

[1] In this Order, we refer to CompTel and its member companies collectively as CompTel.

[2] *See* Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, CC Docket No. 90–132, FCC 90–90, released April 13, 1990.

[3] *See* 47 CFR 1.46(a).

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47 CFR Part 61

[CC Docket No. 90–132; DA 90–798]

Communications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Common Carrier Bureau of the Federal Communication Commission released an order further extending the time in which to file comments and replies in response to its Notice of Proposed Rulemaking (In the Matter of Competition in the Interstate Interexchange Marketplace, CC Docket No. 90–132, 55 FR 18007 (1990)). In an order released by the Commission on May 31, 1990 (DA 90–779), the Commission extended the time for filing comments to June 27, 1990, and for replies to July 27, 1990. On May 31, 1990, the Competitive Telecommunications Association (CompTel) filed a motion requesting a further extension of the filing deadline on the ground that the comment deadline coincides with its previously scheduled Summer Business Conference. The Commission granted CompTel's request for a further extension of the comment deadline.

DATES: Comments must be filed on or before July 3, 1990, and replies must be filed on or before August 2, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Competition in the Interstate Interexchange Marketplace.

Adopted: June 4, 1990.
Released: June 5, 1990.

By the Chief, Common Carrier Bureau.

1. On May 31, 1990, we extended by fifteen days the period for filing comments in response to the Notice of Proposed Rulemaking [1] in this proceeding.[2] CompTel now asks that we further extend the deadline for filing comments to July 3, 1990. CompTel states that the existing comment deadline falls during its previously scheduled Summer Business Conference. It states that unless the comment deadline is further extended, it would have to complete work on its comments prior to the beginning of this conference, which would effectively deny it a full fifteen-day extension. It states that a small further extension would enable it to complete final work on its comments after the conference and would also enable it to incorporate into its comments input received during the conference from its members.

[1] *See* Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, CC Docket No. 90–132, FCC 90–90, released April 13, 1990.

[2] Competition in the Interstate Interexchange Marketplace, CC Docket 90–132, DA 90–779, released May 31, 1990. This order responded to a motion by the Competitive Telecommunications Association (CompTel) seeking a 45-day extension of the comment period.

2. Although we have previously held that a fifteen-day extension of time would appropriately balance CompTel's need for additional time with the public interest in avoiding unnecessary delay in the resolution of the important issues raised in this proceeding, we conclude that the new circumstances presented by CompTel warrant a brief further extension of the deadline for filing comments in this proceeding. We therefore extend the comment deadline to July 3, 1990.

3. Accordingly, *it is ordered,* pursuant to section 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, that the motion of CompTel for further extension of time is granted. The deadline for filing comments is extended to July 3, 1990. Replies must be filed by August 2, 1990.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 90-14069 Filed 6-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-303, RM-7291]

Radio Broadcating Services; Harlan, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a pettion by John Talbott d/b/a KNOD(FM), seeking the substitution of Channel 287C3 for Channel 288A at Harlan, Iowa, and the modification of its license for Station KNOD(FM) to specify operation on the higher powered channel. Channnel 287C3 can be allotted to Harlan in compliance with the Commission's minimum distance separation requirements and can be used at the station's licensed transmitter site. The coordinates for this allotment are North Latitude 41-37-00 and West Longitude 95-16-10. In accordance with § 1.420 of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 287C3 at Harlan or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 2, 1990, and reply comments on or before August 17, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John W. Talbott, P.O. Box 723, Harlan, Iowa 51537 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-303, adopted May 30, 1990, and released June 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filling procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-14070 Filed 6-18-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-304, RM-7295]

Radio Broadcasting Services; Nyssa, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robert M. Mason, seeking the substitution of Channel 254C1 for Channel 254A at Nyssa, Oregon, and the modification of his construction permit to specify the higher powered channel. Channel 254C1 can be alloted to Nyssa in compliance with the Commission's minimum distance separation requirements with a site restriction of 51.6 kilometers (31.1 miles) south to avoid a short-spacing to Stations KKUC(FM), Channel 254C2, La Grande, Oregon, and KWEI-FM, Channel 257A, Weiser, Idaho, and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 43-25-36 and West Longitude 116-51-14. In accordance with § 1.420(g), we will not accept competing expressions of interest for use of Channel 254C1 at Nyssa or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 6, 1990, and reply comments on or before August 21, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Aaron P. Shainis, Esq., Lee J. Peltzman, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., suite 700, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-304, adopted May 31, 1990, and released June 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037..

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–14172 Filed 6–18–90; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 55, No. 118
Tuesday, June 19, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-087]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit To Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to E.I. du Pont de Nemours and Company, Inc., to allow the field testing in Washington County, Mississippi, of cotton plants genetically engineered to express a gene which enables the cotton plants to produce a modified enzyme that detoxifies the effects of sulfonylurea herbicides. The assessement provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of introduction or dissemination of a plant pest and will have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statment need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the envronmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-044-05.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

E. I. du Pont de Nemours and Company, Inc., of Wilmington, Delaware, has submitted an application for a permit for release into the environment, to field test cotton plants genetically engineered to express a gene which enables the cotton plants to produce a modified enzyme that detoxifies the effects of sulfonylurea herbicides. The field trial will take place in Washington County, Mississippi.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plants under the conditions described in the E. I. du Pont de Nemours and Company, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by E. I. du Pont de Nemours and Company, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene that has the effect of conferring tolerance to the herbicide sulfonylurea, has been inserted into the cotton chromsome. In nature, the genetic material contained in a chromosome of flowering plants can only be transferred to another sexually compatible plant by cross pollination. In this field test trial, the introduced gene cannot spread to any other sexually compatible plant for the following reasons: (1) No pollen will be produced because the transgenic plants will not be allowed to flower; and (2) the field test plot is located at a sufficient distance from sexually compatible plants.

2. Neither the acetolactate synthase (ALS) gene itself, nor the gene product confers on cotton plants any pest characteristic. Traits such as weediness are polygenic and cannot be conferred by the addition of a single herbicide tolerance gene. However, the experimental cotton plants remain sensitive to a wide range of other herbicides.

3. The tobacco variety from which the ALS gene was obatined is not a plant pest.

4. The ALS gene does not provide the genetically engineered cotton plants with any measurable selective advantage over genetically unmodified cotton plants in its ability to be disseminated or to become established in the environment.

5. The vector used to transfer the ALS gene into the cotton chromosome has been evaluated for its use in this experiment. The vector, although derived from an original wild type Ti-plasmid with known plant pathogenic potential, has been disarmed; that is, phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and

shown to be non-pathogenic on susceptible plants.

6. The vector agent, the phytopathogenic bacterium *Agrobacterium tumefaciens*, used to deliver the vector encoding the ALS gene into cotton plant cells, has been eliminated by the use of antibiotics to which the vector agent is sensitive and is no longer associated with any genetically engineered cotton plant or seed.

7. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences is not known to be possible. The vector acts by delivering the gene to the cotton genome where it is stably inserted into the cotton chromosomal DNA. The vector cannot replicate independently of its vector agent and does not survive in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a genetically engineered plant to another organism.

8. Sulfonylurea herbicides are a new class of herbicides noted for their high herbicidal activity at very low concentrations, excellent crop selectivity, and low mammalian toxicity.

9. The size of the enclosed field test trial plot is small (200 feet by 240 feet). The plot will be located on the company research farm, which provides adequate physical security.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 13th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14147 Filed 6–18–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 90–088]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit To Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in Pinal County, Arizona, and Jersey County, Illinois, of cotton plants genetically engineered to express a gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which shows reduced sensitivity to the herbicide glyphosate and/or a gene which encodes an enzyme that acts on glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–025–05.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test cotton plants genetically engineered to express a gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which shows reduced sensitivity to the herbicide glyphosate and/or a gene which encodes an enzyme that acts on glyphosate. The field trial will take place in Pinal County, Arizona, and Jersey County, Illinois.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plants under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which shows reduced sensitivity to the herbicide glyphosate and/or a gene which encodes an enzyme that acts on glyphosate has been inserted into a cotton chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other sexually compatible plants because the field test plot is located at a sufficient distance from any sexually compatible cotton plant with which it might cross-pollinate.

2. Neither the recombinant genes themselves nor their gene products, confer on cotton any plant pest characteristic. Traits that lead to weediness are polygenic and cannot be conferred by adding a single gene.

3. The gene does not provide the transformed cotton plants with any measurable selective advantage over nontransformed cotton plants in the ability to be disseminated or to become established in the environment.

4. The plant species from which the 5-enolpyruvylshikimate-3-phosphate synthase gene was isolated are not plant pests. The microorganism from which the glyphosate detoxifying gene was isolated is also not a plant pest.

5. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant DNA but do not confer on cotton any plant pest characteristic.

6. The vector used to transfer the genes to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence of a known plant pest, has been disarmed; that is, pathogenicity genes have been removed from the vector. The vector has been tested and shown not to be pathogenic to any susceptible plant.

7. The vector agent, the bacterium that was used to deliver the vector DNA and the genes into the plant cell, has been shown to be eliminated and no longer associated with any transformed cotton plants.

8. Horizontal movement of the introduced genes is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in or on any plant.

9. The field test plots are physically isolated by a surrounding area of cultivated land in a rural area.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 13th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14148 Filed 6–18–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket 90–096]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit to Field Test Genetically Engineered Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company to allow the field testing in Jersey County, Illinois, of soybean plants genetically engineered to express a gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Liberman, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–038–03.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate. The field trial will take place in Jersey County, Illinois.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase that confers resistance to the herbicide glyphosate has been inserted into the soybean chromosome. In nature, soybean chromosomal genes can only be transferred to other sexually

compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because soybean is a predominantly self-pollinating plant and the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvylshikimate-3-phosphate synthase gene itself, nor its gene product, confers on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvylshikimate-3-phosphate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvylshikimate-3-phosphate synthase gene does not provide the transformed soybean plants with any apparent selective advantage over nontransformed soybean in the ability to be disseminated or to become established in the environment.

5. The vectors used to transfer the 5-enolpyruvylshikimate-3-phosphate synthase gene to soybean plants have been evaluated for their use in this specific experiment and do not pose a plant pest risk. Although two of the vectors contain DNA sequences that were derived from DNA sequences with known plant pest potential, the vectors have been disarmed by the removal of the genes that are necessary for producing plant disease.

6. The vector agent, a bacterium that was used to deliver the vector DNA and the 5-enolpyruvylshikimate-3-phosphate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

7. Horizontal movement of the introduced gene has not been demonstrated. The foreign DNA is stably integrated into the plant genome.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The field test site is small (less than 0.5 acres) and is located on a private research farm which is isolated from any population center.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR part 1550–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 13th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14149 Filed 6–18–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 90–090]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in Yolo County, California, of tomato plants genetically engineered to express either a gene which encodes an enzyme involved in cytokinin biosynthesis, or a construct that is anti-sense to the endogenous pectin esterase gene. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Cathy Joyce, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–066–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a regulated article (see 52 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test tomato plants genetically engineered to express either a gene which encodes an enzyme involved in cytokinin biosynthesis, or a construct that is anti-sense to the endogenous pectin esterase gene. The field trial will take place in Yolo County, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. In this field trial, the introduced genes cannot spread to other plants by cross-pollination because the field test plot is sufficiently distant from any sexually compatible plants with which it might cross-pollinate.

2. Neither the modified pectin esterase gene itself, nor the derived anti-sense RNA, confers on tomato any plant pest characteristic. The tomato cultivar from which the pectin esterase gene was obtained is not a plant pest.

3. Although the *tmr* gene was derived from a plant pest and encodes a gene involved in the synthesis of a plant growth regulator, it does not present a risk of introduction of dissemination of plant disease. The introduced gene was constructed in such a way that expression of the gene is limited to specific tissues in the plant, and therefore, general effects on plant growth and development are not expected. Any unexpected negative effects on tomato will be confined to the tomato plants in this field trial.

4. Neither of the introduced genes confer on tomato any measurable selective advantage over nontransformed tomato plants in their ability to be disseminated or to become established in the environment.

5. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant DNA but do not confer on tomato any plant pest characteristics.

6. The vector used to transfer the introduced genes to the tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk therein. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed, that is, the genes that are necessary for pathogenicity have been removed. The vector has been tested and shown to be not pathogenic to a susceptible plant.

7. The vector agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the genes of interest into tomato plant cells, was eliminated and is no longer associated with the transformed tomato plants.

8. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tomato genome, the vector does not survive in or on the transformed plants. No mechanism is known to exist in nature to horizontally move an inserted gene from a chromosome of a transformed plant to any other organism.

9. The field test site is small, less than 0.3 acre.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*) (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 13th day of June 1990.

James W. Glosse,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14150 Filed 6–18–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 90–068]

Horse Protection; Certified Designated Qualified Person Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Changes in Certified Designated Qualified Person Programs.

SUMMARY: This notice advises the general public and the horse industry of changes to the list of certified designated qualified person programs (DQP programs).

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, REAC, APHIS, USDA, room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

SUPPLEMENTARY INFORMATION: Section 11.7(b)(8) of the Horse Protection Regulations (9 CFR part 11) states in relevant part ". . . A current list of certified DQP progams and licensed DQP's will be published in the **Federal Register** at least once each year, and as may be further required for the purpose of deleting programs and names of DQP's that are no longer certified or licensed, and of adding the names of programs and DQP's that have been certified or licensed subsequent to the publication of the previous list."

A list of certified DQP programs and licensed DQP's was published in the **Federal Register** on March 1, 1990 (55 FR 7348–7349, Docket Number 89–220). Effective April 10, 1990, a new certified DQP program, the California State Horseman's Association, located at 987 Third Street, Santa Rosa, California, 95402, was certified to establish and operate a DQP program. Effective April 20, 1990, the certified DQP program known as the Walking Horse Owners' Association of America, based in Murfreesboro, Tennessee, and the certified DQP program known as the National Horse Show Regulatory Committee, based in Shelbyville, Tennessee, merged into one certified DQP program called the National Horse Show Commission. This new program's address is P.O. Box 167, Shelbyville, Tennessee, 37160. All DQP's licensed under either former program remain licensed under the new program.

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

Done in Washington, DC, this 13th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14151 Filed 6–18–90; 8:45am]

BILLING CODE 3410–34–M

[Docket No. 90–103]

Scrapie Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to announce the second meeting in a series of sessions of the Scrapie Negotiated Rulemaking Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the offices of The Conservation Foundation, 1250 24th Street NW., Washington, DC 20037, July 9 and 10, 1990, from 9 a.m. to 5 p.m. each day.

FOR FURTHER INFORMATION CONTACT: David Galbreath, Planning and Risk Analysis Systems, PPD, APHIS, USDA, room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8017.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on February 26, 1990 (55 FR 6662–6663, Docket No. 89–139), we announced our intent to establish a Scrapie Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92–463). The Committee will develop alternatives to the current regulatory program designed to control scrapie in sheep and goats. The first of the Committee, which was announced in the **Federal Register** meeting notice published on April 19, 1990 (55 FR 14843–14844, Docket No. 90–051), was held on May 8–9, 1990. This notice announces the second meeting in a series of sessions of the Committee.

The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, representatives of the sheep industry, and representatives of other parties with a definable stake in scrapie issues to frame a recommended rulemaking proposal as an alternative to the current regulatory program for the control of scrapie.

The tentative agenda for the second meeting of the Committee is as follows:

First Day

Morning session—9 a.m.
APHIS Opening Remarks
Review of Summary of First Meeting
Review of Negotiated Rulemaking Procedures
Afternoon session—1:30 p.m.
Consideration of Subcommittee Outline For a Flock Certification Plan Public Comments

Second Day

Morning session—9 a.m.
Consideration of Subcommittee Outline For a Flock Certification Plan
Afternoon session—1: 30 p.m.
Review of Substantive Scrapie Issues
Discussion of Future Committee Meeting Agendas

The meetings will be open to the public. Public participation at the meetings will be allowed during periods announced at the meeting for this purpose. Anyone who wants to file a written statement with the Committee may do so before, at the time of the meeting, or after the meeting by sending the statement on or before July 20, 1990, to Helene Wright, 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 the Scrapie Negotiated Rulemaking Advisory Committee.

This notice of meeting is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92–463).

Done in Washington, DC, this 13th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14145 Filed 6–18–90; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Deep Creek Timber Sale, Fishlake National Forest, Wayne County, UT

AGENCY: Forest Service, USDA.

ACTION: Amendment of notice of intent to prepare an environmental impact statement.

SUMMARY: A notice of intent to prepare an Environmental Impact Statement for a proposed timber sale was published in the Federal Register July 14, 1989 (54 FR 29764).

The scoping process and environmental analysis have indicated that the adjacent Snow Bench timber sale should be included in the analysis and Environmental Impact Statement. The proposed Snow Bench sale is located one quarter mile west of the proposed Deep Creek sale. It is located in the same drainage, has the same timber type, and covers 80 acres.

Analysis has also shown that Management Area 7B of the Land and Resource Management Plan for the Fishlake National Forest needs to be changed like Management Area 7A to include other timber harvest methods.

The Draft Environmental Impact Statement is expected to be available in September of 1990 and the Final Environmental Impact Statement is scheduled to be completed by February 1991.

Dated: June 11, 1990.

J. Kent Taylor,

Forest Supervisor.

[FR Doc. 90–14128 Filed 6–18–90; 8:45 am]

BILLING CODE 3410–11–M

Draft Environmental Impact Statement and Revised Land and Resource Management Plan for the Francis Marion National Forest, Berkeley and Charleston Counties, SC

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement (EIS) for the Francis Marion National Forest Revised Land and Resource Management Plan (LRMP). The proposed action is to prepare a revised Forest Land and Resource Management Plan to manage the Forest following the devastating effects of Hurricane Hugo. The scope of change is limited to management area direction and standards and guidelines pertaining to: (1) Restoration of ecosystems including longleaf pine, (2) strategies for enhancement of red-cockaded woodpecker habitat, (3) game and non-game wildlife habitat management, (4) riparian area and wetlands management, (5) the desired future condition of each management area, (6) the recreation strategy for the Forest, and (7) the future capability of the timber resource. The revised LRMP will be prepared in compliance with the direction at 36 CFR part 219 for revision of a Land and Resource Management Plan.

The agency invites comments and suggestions that are within the scope of the proposed action and analysis for the revision. In addition, the agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate in the process and contribute to the final decision.

DATES: Comments related to the issues to be addressed should be received by August 15, 1990, to ensure timely consideration.

ADDRESSES: Send written comments and suggestions to Donald W. Eng, Forest Supervisor, Francis Marion and Sumter National Forests, 1835 Assembly Street, room 333, Post Office Box 2227, Columbia, South Carolina 29202.

FOR FURTHER INFORMATION CONTACT: Al McDonald, Planning Team Leader, (803) 765–5222.

SUPPLEMENTARY INFORMATION: The Francis Marion National Forest Land and Resource Management Plan (LRMP) was approved on April 26, 1985. The devastation from Hurricane Hugo on September 22, 1989, created an almost entirely new resource base. About 70 percent of the sawtimber on the Francis Marion NF has been destroyed. Other Forest resources were also dramatically affected, including the red-cockaded woodpecker. In addition, there is a growing public concern about the drastically changed conditions of the Forest and how they will be addressed. A revised Plan is needed to accommodate these and other changes so as to reflect current conditions. The Francis Marion National Forest LRMP (of 1985), as amended, will remain in effect and continue to be implemented during preparation of the revised Land and Resource Management Plan.

A variety of public participation activities including public meetings are planned. Individuals who have indicated an interest in the Forest's planning process will be notified about the scope of the proposed action and about the process to identify issues. General notice to the public concerning the scope of the proposed action and the issue identification process will be published in a newsletter and/or news releases.

In preparing the draft environmental impact statement and revised Plan, the Forest Service will develop, as a minimum, a range of alternatives that represent different approaches to: (1) Restoration and reclamation of ecosystems including native longleaf pine, (2) strategies for enhancement of the red-cockaded woodpecker, (3) game and non-game wildlife species management, (4) riparian area and wetlands management, (5) the desired future condition of each management

area, (6) the recreation strategy, and (7) the future capability of the timber resource.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1991. At that time, EPA will publish a notice of availability of the draft environmental impact statement and revised Plan in the **Federal Register.**

The comment period on the draft environmental impact statement and revised Plan will be 90 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Francis Marion National Forest participate at this time. To be most helpful, comments should be as specific as possible and may address the adequacy of the draft EIS or the merits of the alternatives discussed (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final EIS and revised Plan. The final EIS and revised Plan are scheduled to be completed by August 1992. In the final EIS, the Forest Service will respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

The responsible official is John E. Alcock, Regional Forester, Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

Dated: June 13, 1990.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 90-14168 Filed 6-18-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Request for Sea Turtle Sightings.

Form Number: Agency—None; OMB—None.

Type of Request: In Use Without OMB Approval.

Burden: 625 respondents; 50 reporting hours; average time for response is 5 minutes.

Needs and Uses: Information on sea turtle sightings is needed from sport fishermen, beach goers, personnnel on offshore platforms, and other interested individuals to assist scientists in developing life histories of these endangered species..

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 13, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-14119 Filed 6-18-90; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than June 30, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

Antidumping duty proceeding	Period
Belgium: Sugar (A-423-077)	06/01/89-05/31/90
Canada: Oil Country Tubular Goods (A-122-506)	06/01/89-05/31/90
Canada: Red Raspberries (A-122-401)	06/01/89-05/31/90
France: Large Power Transformers (A-427-030)	06/01/89-05/31/90
France: Sugar (A-427-078)	06/01/89-05/31/90
Italy: Rayon Power Transformers (A-475-031)	06/01/89-05/31/90
Italy: Rayon Staple Fiber (A-475-079)	06/01/89-05/31/90
Italy: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-475-802)	06/01/89-05/31/90
Japan: Butadine Acrylonitrile Copolymer Synthetic Rubber (A-588-706)	06/01/89-05/31/90
Japan: Fishnetting of Man-Made Fibers (A-588-029)	06/01/89-05/31/90
Japan: Forklift Trucks (A-588-703)	06/01/89-05/31/90
Japan: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-588-807)	06/01/89-05/31/90
Japan: Large Power Transformers (A-588-032)	06/01/89-05/31/90
Japan: 64K DRAMS (A-588-503)	06/01/89-05/31/90

Antidumping duty proceeding	Period
Mexico: Elemental Sulphur (A-201-034)	06/01/89-05/31/90
Romania: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-485-602)	06/01/89-05/31/90
Singapore: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-559-802)	02/01/89-05/31/90
Sweden: Stainless Steel Plate (A-401-040)	06/01/89-05/31/90
Taiwan: Carbon Steel Plate (A-583-080)	06/13/89-05/31/90
Taiwan: Fireplace Mesh Panels (A-583-003)	06/01/89-05/31/90
Taiwan: Oil Country Tubular Goods (A-583-505)	06/13/89-05/31/90
The Hungarian People's Republic: Tapered Roller Bearing and Parts Thereof, Finished and Unfinished (A-437-601)	06/01/89-05/31/90
The People's Republic of China: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-570-601)	06/05/89-05/31/90
The Federal Republic of Germany: Barium Carbonate (A-428-061)	06/01/89-05/31/90
The Federal Republic of Germany: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-428-802)	02/01/89-05/31/90
The Federal Republic of Germany: Sugar (A-428-082)	06/01/89-05/31/90
Countervailing Duty Procedure:	
Canada: Oil Country Tubular Goods (C-122-505)	01/01/89-12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by June 30, 1990.

If the Department does not receive by June 30, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 11, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-14120 Filed 6-18-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review and comment a summary of an application received by the Secretary of State requesting a permit for a foreign fishing vessel to operate in the Exclusive Economic Zone under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). Specifically, the German Democratic Republic has submitted an application to conduct a joint venture (JV) for Illex squid in the Northwest Atlantic Ocean. The application requests 3,000 metric tons of Illex squid be made available for the JV. The large stern trawler/processor RUDOLPH LEONHARD (GC-90-0048) is identified as the vessel which will receive Illex squid from U.S. vessels. Send comments on this application to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910

and/or to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331.

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-427-2339).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of applications for foreign fishing permits, summarizing the contents of the applications in the **Federal Register**. Under the authority granted in a memorandum of understanding with the Department of State, effective November 29, 1983, the National Marine Fisheries Service issues this notice on behalf of the Secretary of State.

Dated: June 12, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-14095 Filed 6-18-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

June 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 20, 1990.

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 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. 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; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution for Categories 351/651, the United States Government has decided to control imports in Categories 351/651 for the period February 28, 1990 through February 27, 1991.

The United States remains committed to finding a solution concerning Categories 351/651. Should 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). Also see 55 FR 11241, published on March 27, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 13, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 20, 1990, entry into the United States for consumption 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 beginning on February 28, 1990 and extending through February 27, 1991, in excess of 82,117 dozen.[1]

Textile products in Categories 351/651 which have been exported to the United States prior to February 28, 1990 shall not be subject to this directive.

Textile products in Categories 351/651 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge the following amounts to the limit established in this directive for Categories 351/651. These charges are for goods imported during the period February 28, 1990 through March 31, 1990.

Category	Amount to be charged
351	2,236 dozen.
651	0.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14121 Filed 6-18-90; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after February 27, 1990.

Increase of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. 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 Governments of the Untied States and Thailand agreed to increase the current limit for Categories 638/639.

A description of the textile and apparel categories in terms of HTS numbers is avaialble 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 55 FR 15261, published on April 23, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 13, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of April 17, 1990 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Thailand and exported during the period which began on March 31, 1990 and extends through March 30, 1991.

Effective on June 20, 1990, you are directed to increase to 1,825,627 dozen [1] the current limit for man-made fiber textile products in Categories 638/639.

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. 90-14122 Filed 6-18-90; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after March 30, 1990.

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATES: June 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. 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; sec. 204 of the Agricutural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as recent consultations held between the Governments of the United States and Thailand have not resulted in a mutually satisfactory solution for categories 340/640, 351/651 and 361, the United States Government has decided to control imports in these categories for the period March 28, 1990 through March 27, 1991, regardless of the date of export.

The United States remains committed to finding a solution concerning Categories 340/640, 351/651 and 361. Should such a solution be reached in further consultations with the Government of Thailand, 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). Also see 55 FR 14994, published on April 20, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 13, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1865), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 20, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Thailand and entered, regardless of the date of export, during the twelve-month period beginning on March 28, 1990 and extending through March 27, 1991, in excess of the following levels of restraint:

Category	Twelve-month limit [1]
340/640	367,213 dozen
351/651	39,776 dozen
361	377,962 numbers

[1] The limits have not been adjusted to account for any imports entered after March 27, 1990.

You are directed to amend the 1990 counting period for Categories 340, 351, 361, 640 and 651 to end March 27, 1990.

Textile products in Categories 340/640, 351/651 and 361 which have entered, regardless of the date of export, into the United States prior to March 28, 1990 shall not be subject to this directive.

For the import period March 28, 1990 through May 31, 1990, you are directed to charge the following amounts to the limits established in this directive. These same quantities shall be deducted from the counting period that ended on March 27, 1990.

Category	Amount to be charged/deducted
340	18,192 dozen
351	12,047 dozen
361	3,500 numbers
640	25,604 dozen
651	2,979 dozen

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these provisions fall 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. 90-14123 Filed 6-18-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishment and Adjustment of Import Limit and Amendment of Restraint Period for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

June 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting a limit and amending a restraint period.

EFFECTIVE DATES: June 15, 1990.

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 the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent negotiations between the Governments of the United States and the Republic of Turkey, agreement was reached, among other things, to establish a specific limit for Categories 351/651 for the period December 1, 1989 through June 30, 1990. The new limit for Categories 351/651 includes an increase for swing, reducing the current limit for the fabric group. This reduction is being made in a separate directive.

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 55 FR 12706, published on April 5, 1990.

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.

Dated: June 14, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 13, 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 30, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Turkey and exported during the period November 29, 1989 through November 28, 1990.

Effective on June 15, 1990, you are directed to establish a new limit of 165,404 dozen for Categories 351/651 for the new seven-month period beginning on December 1, 1989 and extending through June 30, 1990.[1]

Textile products in Categories 351/651 which are exported to the United States prior to December 1, 1989 shall not be subject to this directive.

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. 90-14124 Filed 6-18-90; 8:45 am]

BILLING CODE 3510-DR-M

Amendment and Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

June 13, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits.

EFFECTIVE DATE: June 13, 1990.

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 the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, call (202) 377-3715.

[1] The limit has not been adjusted to account for any imports exported after November 30, 1989.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent negotiations between the Governments of the United States and the Republic of Turkey, agreement was reached, among other things, to amend the current limits for Categories 338/339, 338–S/339–S, 347/348, 347–T/348–T and 350. The amended limits for Categories 338/339, 347/348 and 350 are being increased by application of swing, reducing the current fabric group limit. The reduction to the fabric group also accounts for swing applied to Categories 351/651 in a separate directive.

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 27666, published on June 30, 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.

Dated: June 14, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 13, 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 June 23, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1989 and extends through June 30, 1990.

Effective on June 13, 1990, you are directed to amend the June 23, 1989 directive to include the following amended limits:

Category	Amended twelve-month limit [1]
338/339	1,586,140 dozen of which not more than 1,089,998 dozen shall be in Categories 338–S/339–S [2]
347/348	1,694,085 dozen of which not more than 793,543 dozen shall be in Categories 347–T/348–T [3]
350	177,729 dozen
Fabric Group 219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628, as a group.	86,098,361 square meters equivalent

[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–14125 Filed 6–18–90; 8:45 am]

BILLING CODE 3510–DR–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 27, 1990 beginning at 1 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11 a.m. at the same location and will include discussions of the upper Delaware ice jam project; amendment of Compact § 15.1(b) to fund the F.E. Walter Reservoir project; Delaware Estuary Use Attainability project public briefing and middle and upper Delaware water quality protection strategies.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact.

1. *Pennsylvania Department of Environmental Resources, Bureau of State Parks D–80–7 CP RENEWAL–2.* An application for the renewal of a ground water withdrawal project to supply up to 1.0 million gallons (mg)/30 days of water to the applicant's French Creek State Park from Wells A and B. Commission approval on June 27, 1985 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells be increased from 1.0 mg/30 days to 3.0 mg/30 days. The project is located in Union Township, Berks County, in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Citizens Utilities Water Company of Pennsylvania D–84–60 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 7.5 mg/30 days of water to the applicant's distribution system from Well No. 23. Commission approval on July 24, 1985 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 127.1 mg/30 days. The project is located in Spring Township, Berks County, Pennsylvania.

3. *Hilltown Township Water and Sewer Authority D–86–30 CP.* An application for approval of a ground water withdrawal project to supply up to 1.8 mg/30 days of water to the Hilltown Township Water System from Well No. 5 which has been undergoing a long-term pump test; and to renew approval of Well Nos. 1 and 2 previously approved by DRBC Docket Nos. D–85–61 CP and D–86–60 CP on November 26, 1985, and February 25, 1987. The applicant requests that the total withdrawal from all wells remain limited to 6.9 mg/30 days. The project is located in Hilltown Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Panther Creek Partners D–87–66 (Revision 2).* An application for further revision of a previously approved withdrawal project for a proposed 80 megawatt electric generation plant. The revision includes a relocation of the point of withdrawal from the Lansford Mine Pool, in the Borough of Summit Hill, to the Lausanne Tunnel at a point approximately 500 feet upstream of the Tunnel exit in the Borough of Nesquehoning. The Lausanne Tunnel conveys mine pool drainage, and

discharges to the Lehigh River. The project is located in the Borough of Nesquehoning, Carbon County, Pennsylvaina.

5. *Pitman-Moore, Inc. D–89–1.* An application to modify an industrial wastewater treatment plant located off Willow Street in south Whitehall Township, Lehigh County, Pennsylvania. The treatment plant serves a paint-related process at a 380-acre site formerly known as International Minerals & Chemical's Seiple Plant. The applicant proposes to upgrade the existing lagoon aeration system by constructing activated sludge treatment facilities. The plant will continue to process 1.5 million gallons per day (mgd), and the treated effluent along with 2.2 mgd of non-contact cooling water will be discharged to Jordan Creek through the existing outfall. The project is designed to meet proposed modifications of the NPDES permit (PA0070505) concerning BOD, SS and nutrients. The applicant has also submitted a report regarding the impact of effluent total dissolved solids on the receiving stream. Approval of this application requires a waiver of a DRBC water quality stream objective.

6. *Woodloch Properties, Inc. D–89–57 CP.* An application for approval of a ground water withdrawal project to supply up to 3.03, 2.52 and 3.45 mg/30 days of water to the applicant's potable distribution system and golf course irrigation system from new Well Nos. 5, 6 and 9, respectively; and to limit the withdrawal from all wells to 9.0 mg/30 days. The project is located in Lackawaxen Township, Pike County, Pennsylvania.

7. *Albert C. Wagner Youth Correctional Facility D–90–2 CP (Revised).* An application to revise ground water docket D–90–2 CP to increase the specified limit of wastewater flow from the facility served by the project withdrawal from 0.4 mgd to an interim limit of 0.6 mgd as established in a Memorandum of Understanding with the New Jersey Department of Environmental Protection pertaining to the proposed upgrade of the sewage treatment plant. The project is located in Chesterfield Township, Burlington County, New Jersey.

8. *Richland Township Board of Supervisors D–90–3 CP.* An application for approval of a ground water withdrawal project to supply up to 7.67 mg/30 days of water to the applicant's water distribution system from newly acquired Well No. QM–1, previously approved under the ownership of Quaker Mill Development Corporation (D–88–39 PA) with a withdrawal limit of 1.89 mg/30 days. The project is located in Richland Township, Bucks County, and is in the Southeastern Pennsylvania Ground Water Protected Area.

9. *North Wales Water Authority D–90–6 CP.* An application for the combined renewal of three ground water withdrawal projects supplying up to 37.4 mg/30 days of water to the applicant's water distribution system from Well Nos. 23, 25, 31, 33, 34 and 35 in one new docket. Commission approval for Docket Nos. D–77–90 CP (Well No. 23) and D–78–94 CP (Well No. 25) was limited to five years and will expire unless renewed. Commission approval for Docket No. D–80–43 CP (Well Nos. 31, 33, 34 and 35) has expired; however, the applicant has been conducting a long-term pump test to evaluate effects of increased pumping of Well No. 35. The applicant requests that the total withdrawal from all wells remain limited to 210 mg/30 days. The project is located in Upper Gwynedd and Lower, Gwynedd Townships, Montgomery County, and is in the Southeastern Pennsylvania Ground Water Protected Area.

10. *Burlington City Sewage Treatment Plant (STP) D–90–16 CP.* A project to: Upgrade the applicant's existing 3.2 mgd STP serving the City of Burlington; change the discharge point to the main stem of the Delaware River, and rerate the STP to 2.7 mgd. The existing STP discharges to an unnamed tidal tributary of the Delaware River. TheSTP is located at the intersection of Broad Street and Uhler Avenue, Burlington City, Burlington County, New Jersey.

11. *Binney & Smith, Inc. D–90–23.* An application for approval of a ground water withdrawal and return project to: Supply up to 14 mg/30 days of water to the applicant's manufacturing facility from Well Nos. 1 and 4; return non-contact heating and cooling water to the ground water via existing injection Well No. 2; and limit the withdrawal from all wells to 14 mg/30 days. The project is located in Forks Township, Northampton County, Pennsylvania.

12. *CARAC, Inc. D–90–31.* An application for approval of a ground water withdrawal project to supply to 10.8 mg/30 days of water to the proposed Tilden Industrial Park from new Well Nos. 1, 2, and 3, and to limit the withdrawal from all wells to 10.8 mg/30 days. The project is located in Tilden Township, Berks County, Pennsylvania.

13. *TRANSCO Gas Pipeline Corporation D–90–33.* A surface water withdrawal project to serve the applicant's hydrostatic testing program. The applicant proposes to withdraw four million gallons of water from Neshaminy Creek, pressure test 17.4 miles of its 36-inch diameter natural gas pipeline, and discharge the water back to the taking point after approxmately three days. The water will be withdrawn from the Neshaminy Creek within the limits of Tyler State Park in Newtown Township, Bucks County, Pennsylvania.

14. *Wilimington Country Club D–90–38.* An application for approval of a surface and ground water withdrawal project to: Supply up to 4.32 mg/30 days from new Well No. 3; supply up to 12.95 mg/30 days from an existing intake on Wilson Run, and limit the total irrigation pumpage from the reservoir to 24.4 mg/30 days. The project is located in New Castle County, Delaware.

15. *Whitehall Township Authority DF–90–39 CP.* An application for approval of a ground water withdrawal project to supply up to 15.12 mg/30 days of water to the applicant's distribution system from new Well No. 3980–2, and to retain the existing withdrawal limit from all wells of 73 mg/30 days. The project is located in Whitehall township, Lehigh County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1991. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, water quality standards, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it will be available for examination and review by interested individuals at the Commission's offices upon request beginning July 2, 1990. The public review and comment period will end August 1, 1990. Contact Seymour P. Gross for further information.

Dated: June 12, 1990.

Susan M. Weisman,

Secretary.

[FR Doc. 90–14131 Filed 6–18–90; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 18, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: June 13, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension
Title: Institutional Quality Control Project Workbook
Frequency: Annually
Affected Public: Businesses or other for-profit; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 80
Burden Hours: 10,880
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours:0
Abstract: The Institutional Quality Control Workbook will be used by financial aid administrators in coordination with the performance of quality control activities related to the institutions' administration of Federal student financial aid programs.

Office of Vocational and Adult Education

Type of Review: Revision
Title: Application for Vocational and Adult Education Direct Grant Programs
Frequency: Annually
Affected Public: Individuals or households; state or local governments; non-profit institutions
Reporting Burden:
Responses: 550
Burden Hours: 11,000
Recordkeeping Burden:
Recordkeepers:0
Burden Hours: 0
Abstract: This form will be used by applicants to apply for funding under the Vocational and Adult Education direct grant programs. The Department uses the information to make grant and cooperative agreement awards.

[FR Doc. 90–14097 Filed 6–18–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Butlin, Dunkin M; Unsolicited Financial Assistance Award

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–90CE15468 to Dunkin M. Butlin to provide financial assistance to design, build and test a new constant torque system for oil well beam pumps. DOE will provide $83,600 for the project, which will have a total cost exceeeding $200,000.

Objective: The objective of the proposed project is to improve the inherent efficiency of the oil well beam pump which will locer produce costs and increase the available domestic oil supply.

Based on the receipt of an unsolicited application, eligibility for this award is limited Dunkin M. Butlin, the sole proprietor of User Tec, who has qualifications in a specialized field of technology. The inventor holds a dregree in electronics and electrical engineering and has nine year experience working with oil-field submersible pumps. He also serves as a consultant to a major producer of oil well beam pumps. It has been determined that this project has high technical merit.

The term of the grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, PR–542, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations, Division "B" Officer of Procurement Operations.

[FR Doc. 90–14171 Filed 6–18–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of April 16 Through April 20, 1990

During the week of April 16 through April 20, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

David Dekok, 4/16/90, LFA–0035

The Department of Energy's (DOE) Office of Hearings and Appeals (OHA) considered an administrative appeal of a determination by the DOE's Freedom of Information and Privacy Act Branch (FIPB). This appeal was granted in part, denied in part, and remanded to the FIPB for further action. Important issues

considered in this decision include: (a) The requester's obligation under the FOIA to reasonably describe the information which it is requesting; (b) the DOE's obligation to conduct a search for responsive documents upon receiving a reasonable request; (c) whether the requester in this case was a "member of the news media"; (d) whether the DOE can refuse to conduct a search because it believes that responsive documents are "in the public domain"; (e) whether public availability of a document excuses the DOE from its obligation to release the document; (f) whether the DOE's conditioning the conduct of a search on the requester's providing assurances of willingness to pay search and review fees was proper in this case; and (g) whether the requester should have been granted a waiver of search, review, and duplication fees in this particular case.

Request For Exception

Knox Nelson Oil Co., Inc., 4/18/90, LEE–0011

Knox Nelson Oil Co., Inc. filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied with respect to the filing of Form EIA–782B.

Motion For Discovery

Revere Petroleum Corporation, Richard E. Dobyns, 4/29/90, HRD–0299, HRD–0300, HRH–0299

Revere Petroleum Corporation (Revere) and Richard E. Dobyns (collectively, "the Respondents") filed two Motions for Discovery and a Motion for Evidentiary Hearing, relating to a Proposed Remedial Order (PRO) that was issued to the Respondents by the Economic Regulatory Administration (ERA) on August 9, 1983. In the PRO, the ERA alleges, inter alia, that during the period April 1979 through March 1980 (audit period), Revere was a reseller of crude oil which engaged in a practice known as "layering," prohibited under 10 CFR 212.186. In the first Motion for Discovery directed to the ERA (Case No. HRD–0299), the Respondents sought discovery including 34 mostly multi-part interrogatories, 25 requests for production of documents, the depositions of past and present ERA employees and six requests for admissions. In considering this request, the DOE determined the discovery motion should be rejected in substantial part because: (i) Certain of the Respondents' interrogatories involved legal rather than factual matters, or inappropriately sought identification of ERA audit personnel, or sought an unnecessary restatement of the PRO's allegations; (ii) the Respondents' requests for production of documents involved unjustified administrative record discovery or contemporaneous construction discovery of the price rules involved in the proceeding, or sought extraneous audit materials and irrelevant agency documents; (iii) the Respondents failed to justify their request to depose ERA personnel; and (iv) the admission requests were improper. However, in considering a collateral request by the Respondents to depose certain crude oil refiners, the DOE determined that the Respondents should be permitted to supplement the record in support of their "sales to refiner" defense to the alleged layering violation. In their second Motion for Discovery (Case No. HRD–0300), the Respondents sought discovery from several parties who were previously joined as recipients (Joined Parties) of the PRO but later removed from the proceeding, having entered into settlements with the ERA. In this motion the Respondents sought responses to 14 interrogatories, production of 12 categories of documents, deposition testimony and seven admissions. In considering this motion, the DOE determined that this discovery should be denied because: (i) much of the discovery was rendered moot as a consequence of the Joined Parties' settlement with the ERA; (ii) the Respondents had already received much of the discovery requested pursuant to a prior discovery order, *Gordon Walz*, et al., 13 DOE ¶ 84,009 (1985); (iii) deposition discovery was unjustified; and (iv) the discovery sought was otherwise irrelevant to the charges alleged in the PRO. Finally, in considering the Respondents' Motion for Evidentiary Hearing, the DOE determined that the matters raised in the motion were inappropriate for resolution in the context of an evidentiary proceeding. Accordingly, the Motion for Discovery (Case No. HRD–0299) was granted in part, and the Motion for Discovery (Case No. HRD–0300) and the Motion for Evidentiary Hearing were denied.

Refund Applications

Atlantic Richfield Company/Quaker Car Wash, RF304–4785; Frank Gergits Alton Park Arco, RF304–4786; Quaker Car Wash, 4/19/90, RF304–5004

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. Franklyn Gergits (Case No. RF304–4785) and Charles McMurtrie (Case No. RF304–5004) each requested a refund based on purchases made by Kald, Inc., trading as Quaker Car Wash. The DOE determined that Kald, Inc., a corporation with its own legal identity, was the party injured by the alleged ARCO overcharges and, as a result, the party entitled to receive an ARCO refund. Therefore, Charles McMurtrie, the current sole shareholder in Kald, Inc., was granted a refund of $2,909 ($2,121 in principal and $788 in accrued interest) based on the ARCO purchases made by Kald, Inc. The application filed by Frank Gergits on behalf of Kald, Inc. and Quaker Car Wash was denied. Mr. Gergits also filed an application on behalf of Alton Park ARCO, a retail station which Mr. Gergits purchased in 1980. There was no evidence to suggest that when Mr. Gergits purchased the station, he also purchased the right to receive a refund based on the station's prior ARCO purchases. As a result, the DOE determined that Mr. Gergits should receive a refund based only upon the ARCO products he purchased as proprietor of Alton Park ARCO. Mr. Gergits was granted a refund of $273 ($199 in principal and $74 in accrued interest).

Exxon Corporation/Duke Power Company, 4/18/90, RF307–8531

The DOE issued a Decision and Order concerning an Application for Refund filed by Duke Power Company (Duke) in the Exxon Corporation special refund proceeding. Duke, a public utility, purchased products directly from Exxon, and was found to be eligible to receive a refund equal to its full allocable share. Duke certified that it would notify the appropriate regulatory body of any refund received, and would pass through the entire refund to its customers. The sum of the refund granted in this Decision is $24,775 ($19,220 principal plus $5,555 interest).

Gackle Co-op Oil Company, 4/20/90, RF272–43732

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The applicant was a

agricultural cooperative which sold 6,225,544 gallons of petroleum products to its members. The applicant was granted a refund of $4,980.

Garden State Paper Company, Inc., 4/19/90, RF272–488, RD272–488

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Garden State Paper Company, Inc., based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used the products for its newspaper recycling operations, and determined its claim using actual purchase records. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of 28 states and two territories filed a Statement of Objections and a Motion for Discovery with respect to the applicant. The DOE found that the states' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. Garden State Paper Company, Inc.'s Application for Refund was granted. The total refund amount granted is $118,899.

Gladieux Refinery, Inc., 4/18/90, RF272–43817

The DOE issued a Decision and Order denying an Application for Refund filed in the crude oil special refund proceeding. The applicant was a refiner of petroleum products that had waived its right to a crude oil refund when filing for refund from the refiners escrow of the Stripper Well proceeding.

Gulf Oil Corporation/Hornsby Gulf, et al., 4/16/90, RF300–8954, et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $26,016. The Decision and Order included eight Applications which were originally filed through Federal Refunds, Inc. (FRI). Pursuant to *Gulf Oil Corp./LeBlanc's Gulf Service*, 18 DOE ¶ 85,876 (1989), the DOE will mail the refund checks of applicants represented by FRI directly to the applicants. This Decision and Order also included one Application for Refund filed by Petroleum Association Development Corporation (PAD). Akin Energy, Inc. (Akin) fled an "amended" application in the same case. Because PAD has been disbarred from representing applicants before the Office of Hearings and Appeals (OHA), and the OHA does not have full confidence in Akin's representation, the refund check in this case will be mailed directly to the applicant.

Gulf Oil Corporation/Spartan V & H Oil Co., Spartan Oil Co., 4/17/90, RF300–8430; RF300–10513

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Spartan V & H Oil Co., a reseller, and Spartan Oil Co., a reseller and a consignee. Since V & H Oil Co. and Spartan Oil Co. are commonly owned, their claims were considered on an aggregate basis. The firms' total allocable share as a reseller plus Spartan Oil Co.'s allocable share as a consignee exeeded $5,000. Therefore, under the presumptions of injury, each firm received 40 percent of its allocable share as a reseller. In addition, Spartan Oil Co. received 10 percent of its allocable share as a consignee. The total refund granted in this Decision, including accrued interest, is $27,873.

Gulf Oil Corporation/Van's Gulf Service, et al., 4/20/90, RF300–8826, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceedings. The applications were made by indirect purchasers and were approved using a presumption of injury. The sum of the refunds granted in this Decision, which included both principal and interest is $8,106. The Decision and Order included one application which was originally filed through Federal Refunds, Inc. (FRI). Pursuant to *Gulf Oil Corporation/LeBlanc's Gulf Service*, 18 DOE ¶ 85,876 (1989), the DOE will mail the refund check of the applicant represented by FRI directly to the applicant.

Gulf Oil Corporation/Warren's Gulf, Warren's Auto Service, 4/20/90, RF300–07982; RF300–10949

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of the owner of both Warren's Gulf and Warren's Auto Service. The earlier application was submitted on behalf of the two stations by PAD, Inc. The latter application was submitted on behalf of the same applicant by Akin Energy, Inc. Because of the duplicative nature of this second application, Case No. RF300–10949 was dismissed. The earlier application was granted under a small claims presumption of injury. As established in *Herbert L. Tanner*, 19 DOE ¶ 85,228 (1989), the refund check granted was sent directly to the applicant. The total refund granted, which includes accrued interest, is $1,835.

Hulcher Services, 4/16/90, RF272–9354, RD272–9354

The Department of Energy's Office of Hearings and Appeals (OHA) granted an Application for Refund filed by Hulcher Services, (Hulcher) in the Subpart V crude oil proceeding. A group of 28 States and two territories of the United States (the States) filed consolidated Objections and Comments in opposition to Hulcher's application. The States also submitted a Motion for discovery. OHA rejected the States' objections and the Motion for Discovery. The refund granted in this case was $5,415.

Lower Colorado River Authority, 4/19/90, RF272–26439

The Department of Energy's Office of Hearings and Appeals (OHA) granted the application for a crude oil refund filed by the Lower Colorado River Authority (LCRA), a utility providing electrical power. OHA's decision requires the LCRA to pass the refund through to its customers and to file a report with OHA indicating that it had complied with this requirement.

Merck & Company, Inc., 4/17/90, RF272–5316, RD272–5316

The DOE granted a refund to Merck & Company, Inc. (Merck), a pharmaceutical firm that purchased refined petroleum products during the period of August 19, 1973 through January 27, 1981. A group of 28 States and two territories of the United States (the States) filed two separate consolidated pleadings objecting to Merck's application. The only evidence submitted by the States was an affidavit by an economist stating that the unique market environment in which pharmaceuticals are sold made it likely that firms in the pharmaceutical industry passed through the crude oil overcharges to their consumers. The economist also pointed out that the firms in the pharmaceutical industry and Merck enjoyed increased profits during the crude oil controls period. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that Merck should receive a refund. In addition, the States' Motion for Discovery was denied. Accordingly, Merck was granted a refund of $188,199.

Mobil Oil Corp./Apex Oil Co., 4/18/90, RF225–10403

The DOE issued a Decision granting a refund to Apex Oil Company in the

Mobil Oil Corporation special refund proceeding. Apex applied for a refund under the appropriate presumptions of injury for its purchases of 134,669,362 gallons of motor gasoline and 58,218,619 gallons of other products from Mobil. The DOE found that, for its motor gasoline purchases, Apex was eligible for a refund of 35 percent of the volumetric refund amount under the presumption of injury for "wholesalers selling to retailers." Thus, Apex was granted a principal volumetric refund of $18,948 on its motor gasoline purchases (134,669,362 × $0.000402 × 35 percent = $18,948). The DOE found that because Apex had already been granted a refund in excess of the $5,000 small claims limit, and had not submitted a detailed demonstration of injury, it was not entitled to an additional refund based on its purchases of products other than motor gasoline. The total amount granted in this Decision was $33,341, consisting of $18,948 in principal plus $14,393 in interest.

Port Authority of Allegheny County, 4/19/90, RF272–485

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Port Authority of Allegheny County based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used the products in providing public transportation for the Pittsburgh metropolitian area, and determined its claim using actual purchase records. The applicant was an end-user of the products it claimed and was therefore presumed injured. Philip P. Kalodner, Counsel for Utilities, Transporters, and Manufacturers, filed a Statement of Objections with respect to the applicant. The DOE found that Mr. Kalodner's filing was insufficient to rebut the presumption of injury for end-users. Therefore, the Application for Refund was granted. The total refund amount granted is $55,105.

Teledyne Allvac, RF272–7415; RD272–7415; Tillden Mining Co., 4/20/90, RF272–7915; RD272–7915

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of 28 States and two territories of the United States (the States) filed identical, consolidated pleadings objecting to and commenting on the applications. The only evidence submitted by the States was an affidavit of a consulting economist indicating that firms in the mining industry in general were able to pass on any increased energy costs to their customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive a refund. In addition, the Motions for Discovery filed by the States were denied. The sum of the refunds granted in this Decision is $98,437.

Texaco Inc./Wimpee Distributing Co., Inc., 4/17/90, RF321–1

The DOE issued a Decision and Order concerning an Application for Refund filed by Wimpee Distributing Co., Inc. (Wimpee) in the Texaco Inc. special refund proceeding. Wimpee purchased directly from Texaco and was a reseller of Texaco products. Wimpee's allocable share exceeded $10,000. Instead of making an injury showing to receive its full allocable share, Wimpee chose to accept the larger of $10,000 or 50 percent of its allocable share. The total refund granted in this decision is $11,436 ($10,000 principal and $1,436 interest).

Trapper Mining, Inc., 4/18/90, RF272–11482, RD272–11482

The Department of Energy's Office of Hearings and Appeals (OHA) granted an Application for Refund filed by Trapper Mining, Inc., a coal mining firm. A group of 28 States and two territories (the States) filed consolidated objections and comments contending that the Application for Refund should not be granted. The States also filed a Request for Discovery. The States attempted to rebut the end-user presumption of injury by submitting an affidavit by a consulting economist. The affidavit expressed the economist's belief that coal mining firms were generally able to pass on a portion of crude oil overcharges to their downstream customers. OHA rejected this argument as well as the States' Request for Discovery, and granted the refund application. The total refund approved was $6,044.

Refund applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./Downs Arco et al	RF304–7501	4/17/90
Atlantic Richfield Co./Swartz Oil Co. Inc. et al	RF304–8100	4/20/90
Exxon Corp./Bolding's Exxon et al	RF307–4851	4/19/90
Exxon Corp./Isam A. Kussad et al	RF307–1500	4/18/90
Gulf Oil Corp./C.A. Torbett, Inc.	RF300–5833	4/17/90
Gulf Oil Corp./Gerald Gulf Service et al	RF300–7621	4/20/90
Gulf Oil Corp.:		
Wiener's Gulf Service Station #1	RF300–10645	4/20/90
Wiener's Gulf Service Station #2	RF300–10646	
Murphy Oil Corp./Davis Service Station et al	RF309–103	4/19/90
Santee Cooper	RF272–29352	4/18/90
Shell Oil Co./Tippett Enterprises, Inc. et al	RF315–6223	4/18/90
The Ashton Co., Inc. et al	RF272–25515	4/19/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Airport Texaco Service et al	RF321–00023
Chris #2	RF304–9124
Devaughn's Arco	RF304–5066
J.C. Box Service Station	RF300–8471
Kenneth B. Olson	RF272–43114
Lawhorne Brothers Inc	RF272–7338
McNeilly Arco Service	RF304–11666
Mitch's Gulf	RF300–10256
R.L. Horne	RF300–2300
USX Corporation	RF272–78441
Vamc American Lake	RF272–43622
Wells Grocery	RF307–2020
Weyerhauser	RF272–70814

Appendix

Name of Applicant	Case No.
Airport Texaco Service	RF321-00023
Al & Selwyn, Inc	RF321-00024
Anderson Texaco	RF321-00028
Angotti Texaco	RF321-00029
Atex, Inc	RF321-00031
Charles Nutt Texaco	RF321-00036
Campus Texaco	RF321-00041
Acosta's Texaco	RF321-00019
E.G. Abbott LP Gas Co.	RF321-00018
Burlington Texaco	RF321-00016
Brickhouse Texaco	RF321-00011
Brent Air Texaco	RF321-00010
Brenk's Texaco	RF321-00009
Billy Davis Texaco	RF321-00063
Bendel Texaco	RF321-00056
Belltown Service Station	RF321-00054
Bedenbaugh's Texaco	RF321-00053
Barsha's Texaco	RF321-00052
Carter's Texaco Service	RF321-00045
Cedar Mill Texaco	RF321-00044
Conway Texaco	RF321-00079
Chris Texaco	RF321-00078
Cooper's Texaco	RF321-00077
Craig's Texaco Service	RF321-00071
Cumberland & Harnett Oil & Gas	RF321-00069
Crestmoor Texaco	RF321-00066
Bill's Texaco Service	RF321-00064
College Square Texaco	RF321-00080
Cloninger Texaco Service	RF321-00081
Clinton Texaco	RF321-00082
Cluster Texaco	RF321-00085
D'Ambra's Service Station	RF321-00095
Bill Williams Service	RF321-00060
Curtis Adams Texaco	RF321-00020
Dick's Texaco	RF321-00102
Leon Sevcik's Texaco	RF321-1700
P & C Texaco	RF321-1701
P & C Texaco	RF321-1702
Maywood Auto	RF321-1706
Merritt Oil Co., Inc.	RF321-1707
Milne's Texaco	RF321-1711
Mission Gorge Texaco Service	RF321-1713
Modern Gas Co., Inc	RF321-1714
Mission Texaco	RF321-1715
Myrtle Jean Brock Texaco	RF321-1717
Neuetonneill Texaco	RF321-1720
Quinn's Texaco Service	RF321-1723
Pumb's and Bay's, Inc	RF321-1724
Otis Texaco Service	RF321-1726
Octillo Texaco	RF321-1729
Southport Texaco	RF321-1730
Stender Oil Company	RF321-1733
Stone's Texaco	RF321-1736
Sullivan DR Texaco	RF321-1738
St. George Oil Corporation	RF321-1741
Sooner Texaco	RF321-1742
Soldotna Texaco Service	RF321-1743
Smitty's Texaco	RF321-1744
Lucien's Gulf	RF321-1749
Sidney's Texaco, Inc	RF321-1750
R & P Texaco	RF321-1753
Peters Texaco	RF321-1757
Petty Texaco	RF321-1758
Austin Avenue Texaco	RF321-1759
Sevlian Texaco	RF321-1761
Shippan Texaco, Inc	RF321-1764
Perry N. Main Texaco	RF321-1765
Rob Baker Texaco	RF321-1767
Roberts Texaco	RF321-1769
Roberts' Texaco Service Sta	RF321-1770
Peco Texaco	RF321-1778
Ram Tire Co., Inc	RF321-1780
Ray Jones Texaco	RF321-1782
Ray's Texaco and Grocery	RF321-1784
Ray's Texaco Service	RF321-1785
Raymond Muzuy Texaco	RF321-1787
Kaualb Texaco	RF321-1654
Lake Delton Texaco	RF321-1662
Pioneer Texaco	RF321-1664
Joe's Texaco	RF321-1672
Interstate Texaco	RF321-1673
Poplar Tent Texaco	RF321-1676
Nick's Service Station	RF321-1678
Ob Texaco	RF321-1680
Rockwell Texaco	RF321-1681
Ron's Texaco	RF321-1684
Rub-a-Dub Dub Car Wash	RF321-1685
Logan's Texaco	RF321-1692
Lyles and Son Texaco	RF321-1695
McIntyre-Snyder	RF321-1698
Norman Chastant's Garage	RF321-1699
Ed's Texaco	RF321-1601
Eddie Texaco Ser	RF321-1603
Eddie's Texaco	RF321-1604
Edgewater Texaco	RF321-1606
Dickerson Texaco	RF321-1612
Dixon Texaco	RF321-1614
Don's Texaco	RF321-1617
Doug & Emile Texaco	RF321-1618
Forest Park Texaco Service	RF321-1619
Frank's Texaco	RF321-1623
Franklin Texaco	RF321-1624
Homer's Texaco Garage	RF321-1625
Jim & George Texaco	RF321-1627
Jim Davis Service Station	RF321-1628
Jay & AL's Texaco	RF321-1634
Jay's Texaco	RF321-1635
Jarvis Texaco	RF321-1637
Jonn's Texaco Serv. Stat., Inc	RF321-1642
Joe's Texaco	RF321-1646
Ken Lang Texaco	RF321-1648
Keizer Texaco	RF321-1651
G. Crawford Pipe	RF321-1537
Holiday Inn Texaco	RF321-1538
Greg's Texaco	RF321-1543
Harold's Texaco	RF321-1546
Govan Texaco Station	RF321-1548
Gos Texaco	RF321-1552
G & B Texaco	RF321-1553
Gallaway's Service Station	RF321-1554
Gammill Oil Co	RF321-1556
Friedrichs' Texaco	RF321-1559
Fulp's Texaco	RF321-1560
Fairwood Texaco	RF321-1561
Flick's Texaco	RF321-1564
Flick's Texaco	RF321-1565
Foley's Texaco Service	RF321-1566
Floyd's Texaco	RF321-01567
Floyd's Texaco	RF321-01568
Ford's Texaco & Garage	RF321-1569
Hayes Texaco	RF321-1577
Halprin's	RF321-1578
Handy's Texaco	RF321-1579
Hanna Texaco	RF321-1580
Hagar Texaco	RF321-1582
Elden Lyon's Texaco	RF321-1584
West St. Texaco	RF321-1585
Enchanted Oaks Texaco	RF321-1587
Expressway Texaco Ser. Inc	RF321-1590
Pine Tree Texaco	RF321-1591
Dwight Barnhart	RF321-1597
Tony's Texaco Service Center	RF321-1837
Unico., Inc	RF321-1820
Vauglean's Texaco	RF321-1825
Vern's Texaco	RF321-1827
F L Vick Texaco DLR	RF321-1828
Vincent's Texaco	RF321-1829
Truett's Texaco	RF321-1831
Texaco Service Center	RF321-1832
Thedford's Texaco Service Sta	RF321-1838
Thomspon's Texaco	RF321-1839
Schevnayder's Texaco	RF321-1841
Taylor's Texaco	RF321-1845
Tedford's Texaco Service Sta	RF321-1846
Texaco 125	RF321-1847
Texaco Auto Clinic	RF321-1848
S & T Texaco	RF321-1850
Sam's Texaco	RF321-1851
Sav-on-Gas Car Wash	RF321-1855
Ye Olde Town Pump	RF321-1857
Yoder's Texaco	RF321-1858
Jeff's Texaco Service	RF321-1860
Jimmy Trusty	RF321-1862
West Park Texaco	RF321-1864
Wheeler's Texaco	RF321-1866
Wilemon Bros. Texaco	RF321-1868
Joan Waughaman Casto	RF321-1872
Vogel's Texaco	RF321-1878
Mosley's Texaco	RF321-1716
Amerada Hess Cor	RF321-2726

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 13, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-14170 Filed 6-18-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SW-FRL-3788-6]

Characterization of Municipal Solid Waste in the United States: 1990 Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today announcing the availability of the most recent in a series of reports characterizing the municipal solid waste (MSW) in the United States. This report, entitled "Characterization of Municipal Solid Waste in the United States: 1990 Update," updates the previous report released in 1988.

This report characterizes the MSW stream based on data through 1988. It breaks down contributions to the waste stream both by material and by product category, analyzing the waste stream by weight and, for the first time, by volume. This 1990 Update includes more specific information on products and materials than do previous EPA characterization reports.

With respect to the amounts of MSW generated in the United States, the report includes historical data between 1960 and 1988. Composition percentages by weight and by volume for the components of the waste stream are

provided and projections of MSW generation are then made through the year 2010; per capita MSW generation amounts are also presented.

Concerning information on waste management, the report provides historical recycling, composting, and combustion amounts from 1960 through 1988. Though previous EPA characterization reports contained specific MSW recycling projections to the year 2000, long-range projections for recycling/composting are not provided in the 1990 Update because of the significant and rapid changes taking place nation-wide in recycling programs, legislation, technology and consumer emphasis. Therefore, such projections are made only to the year 1995, and are presented as a range. MSW combustion amounts are presented through the year 2000; such projections are possible because of the long lead times in planning, permitting and construction incinerators.

The report shows that, in 1988, generation of MSW totaled about 180 million tons; this is a per capita waste generation rate of 4 pounds per person per day. Of the 180 million tons generated, 13.1% was recovered for recycling, 14.2% was combusted and the remaining 72.7% went primarily to landfills.

By material, the waste stream in 1988 was made up of the following (by weight):

- 40% Paper/paperboard (25% of which was recovered for recycling)
- 17.6% Yard Waste (1% collected for composting)
- 8.5% Metals (14.6% recovered/recycled)
- 8.0% Plastics (1.1% recovered/recycled)
- 7.4% Food Waste (none collected/composted)
- 7.0% Glass (12.0% recovered/recycled)
- 11.6% Other (very little recycling of rubber, leather, textiles, wood, etc.)

In the year 1995, the total amount of MSW generated is expected to reach 200 million tons, and recycling is expected to range between 20% adn close to 28%. By the year 2000, the amount of waste generated is expected to reach 216 million tons, meaning that per capita waste generation will reach 4.41 pounds per person per day, a 10% increase over 1988 levels. In light of the extensive changes that may take place in MSW recycling and management over the next decade, no recycling projections are made for the year 2000.

The 1990 Update analyzes MSW generation, recovery/recycling, and disposal rates for the entire United States, so these figures may not correlate well with the waste streams of particular states, communities or municipalities. However, it is important that regional, urban/rural, and other variations in the composition and management of MSW be recognized. Therefore, the EPA invites any information, data or comments that would be helpful in identifying such variations.

ADDRESSES: The original and two copies of the comments should be sent to: Municipal Solid Waste Program (OS–301), Attn: MSW Characterization, EPA Headquarters, 410 M Street SW., Washington DC 20460.

This report (Docket number F–90–CSWA–FFFFF) is available for viewing at all EPA libraries and in the EPA RCRA Docket, room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, from 9:30 a.m. to 3:30 p.m., Monday through Friday, except legal holidays; telephone (202) 382–4646. The public may copy a maximum of 50 pages of material from any docket at no cost. Additional copies cost 20 cents each.

The report may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161; to phone, call (703) 487–4600: "Characterization of Municipal Solid Waste in the United States: 1990 Update" (EPA/530–SW–90–042; NTIS No: [Insert NTIS Number]). A copy of the Executive Summary (EPA/530–SW–90–043) is available free of charge through the RCRA Hotline at (800) 424–9346 or (202) 382–3000.

FOR FURTHER INFORMATION CONTACT: For general information and/or a copy of the Executive Summary, call the RCRA Hotline at the above number. For technical information on the report, contact Paul Kaldjian, Office of Solid Waste (OS–301), U.S. EPA, 401 M Street SW., Washington DC 20460, (202) 382–3346.

Dated: June 9, 1990.

Don R. Clay,

Assistant Administrator.

[FR Doc. 90–14162 Filed 6–18–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications, Hearings, Determinations, etc.; Cordell, Dorothy C., et al.

1. The Commission has before it the following mutually exclusive applications for 4 new FM stations:

I.

Applicant, City and State	File No.	MM Docket No.
A. Dorothy C. Cordell, Olathe, Kansas.	BPH–880420MC	90–256
B. R. John Riggins d/b/a Olathe Communications, Olathe, Kansas.	BPH–880421MF	.....
C. Commuter Broadcasting, Inc., Olathe, Kansas.	BPH–880421MK	.....
D. Richard P. Bott, II, Olathe, Kansas.	BPH–880421NG	.....
E. James D. Harbart and Marianne S. Harbart, Joint Tenants with Right of Survivorship, Olathe, Kansas.	BPH–880421NH	.....
F. Pamela R. Jones, Olathe, Kansas.	BPH–880421NK	.....
G. Prairie Rose Broadcasting, Limited Partnership, Olathe, Kansas.	BPH–880421NQ	.....
H. M. C. Broadcasting Company, L.P., Olathe, Kansas.	BPH–880421NW	.....

Issue Heading and Applicants

1. Air Hazard—A,B,C,D,F,H
2. Comparative—A–H
3. Ultimate—A–H

II.

Applicant, City and State	File No.	MM Docket No.
A. Finley Willis, Jr., Lawrenceburg, KY.	BPH–880503MA	90–271
B. MTW Communications, Lawrenceburg, KY.	BPH–880504MH	.....
C. Anderson County Broadcasters, Lawrenceburg, KY.	BPH–880504MJ	.....
D. Anderson Broadcasting Company, Lawrenceburg, KY.	BPH–880505MV	.....
E. Hometown Broadcasting of Lawrenceburg, Inc., Lawrenceburg, KY.	BPH–880505OK	.....

Issue Heading and Applicants

1. Comparative—A–E
2. Ultimate—A–E

III.

Applicant, City and State	File No.	MM Docket No.
A. Coshocton Broadcasting Company, Inc., Byesville, Ohio.	BPH–880714MK	90–261
B. Mic Rathje, Byesville, Ohio	BPH–880714MO	.....
C. Gary A. Petricola, Byesville, Ohio.	BPH–880714NG	.....
D. Hometown Broadcasting Company, Byesville, Ohio.	BPH–880714NO	.....

Issue Heading and Applicants

1. Air Hazard—C,D
2. Environmental—B
3. Comparative—A,C,C,D
4. Ultimate—A,B,C,D

IV.

Applicant, City and State	File No.	MM Docket No.
A. Ledyard Radio Limited Partnership, Ledyard, CT.	BPH–880714MM	90–262

Applicant, City and State	File No.	MM Docket No.
B. The Taft Group, Inc., Ledyard, CT.	BPH-880714MP	.....
C. Ledyard Broadcasting Company, Ledyard, CT.	BPH-880714MQ	.....
D. Clark F. Smidt, Ledyard, CT...	BPH-880714NH	.....
E. Gloria E. Fuller d/b/a Ledyard Community Broadcasting, Ledyard, CT.	BPH-880714NL	.....
F. Ledyard Connecticut FM Radio Limited Partnership, Ledyard, CT.	BPH-880714NX	.....

Issue Heading and Applicants

1. Comparative—A,B,C,D,E,F
2. Ultimate—A,B,C,D,E,F

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800.)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90-14067 Filed 6-18-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Proposed New System of Records

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

ACTION: Notice of proposed system of records—"Freedom of Information Act and Privacy Act Requests System."

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the FDIC gives notice of the proposed establishment of a new system of records entitled "Freedom of Information Act and Privacy Act Requests System."

DATES: Comments on the establishment of the system must be submitted by August 20, 1990. The system will become effective September 4, 1990, unless a superseding notice to the contrary is published before that date.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street, NW., Washington, DC 20429, or hand-delivered to Room F-400 at 1776 F Street, NW., Washington, DC, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: M. Jane Williamson, Assistant Executive Secretary, FDIC, 550-17th Street, NW., Washington, DC 20429, (202) 898-3713 or John P. Adams, Senior Attorney (FOIA), at (202) 898-3819.

SUPPLEMENTARY INFORMATION: The FDIC is proposing to establish a new system of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), entitled "Freedom of Information Act and Privacy Act Requests System." The system will consist of requests and responses to requests for records under the Freedom of Information Act and/or the Privacy Act.

Accordingly, the Board of Directors of the FDIC proposes to establish the system to read as follows:

FDIC 30-64-0022

System name: Freedom of Information Act and Privacy Act Requests System.

System location: Office of the Executive Secretary, 550-17th Street, NW., Washington, DC 20429. In addition, certain of the records may be maintained at the division or office levels in the FDIC Washington office.

Categories of individuals covered by the system: Persons filing Freedom of Information Act and/or Privacy Act requests and those filing an appeal of a denial, in whole or part, of any such requests.

Categories of records in the system: This system consists of letter requests, internal memoranda, response letters, appeals of denials, final determinations, and request log.

Authority for maintenance of the system: The Freedom of Information Act and the Privacy Act of 1974 (5 U.S.C. 552 and 552a).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information in this system may be disclosed:

(1) To another federal government agency having records within the scope of a request;

(2) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings; and

(4) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained on computer discs and in file folders.

Retrievability: Retrieved by requester's name, firm, assigned log number, or nature of request.

Safeguards: File folders are maintained in lockable metal file cabinets. Computer discs are accessed by authorized personnel.

Retention and disposal: Freedom of Information Act ("FOIA") requests and related documents which are answered affirmatively are destroyed two years after the date of the reply. For requests which are answered negatively, the records are destroyed six years after the date of the reply, unless the denial is appealed, in which case the request and related documentation are destroyed six years after the final agency determination or three years after final adjudication by the courts, whichever is later. Documents maintained for control purposes are destroyed six years after the last entry. Documents maintained for processing Privacy Act requests are disposed of in accordance with approved disposition instructions for individual records, or five years after the disclosure for which the accountability was made, whichever is later. Documentation relating to the general administration of the FOIA and Privacy Act programs is destroyed after two years or sooner if no longer administratively useful.

System manager(s) and address: Executive Secretary, Office of the Executive Secretary, FDIC, 550–17th Street, NW., Washington, DC 20429. For division or office levels, the head of the appropriate division or office.

Notification procedure: Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550–17th Street, NW., Washington, DC 20429.

Records access procedures: Same as "Notification" above.

Contesting record procedures: Same as "Notification" above.

Record source categories: Requesters, internal memoranda, and employees processing the requests.

Systems exempted from certain provisions of the Act. The FDIC has claimed exemptions for several of its other systems of records under the Privacy Act. See 12 CFR 310.13. During the processing of a Freedom of Information Act or Privacy Act request, exempt materials from those other systems may become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into this system of records, the FDIC has claimed the same exemptions for the records as they have in the original primary systems of records of which they are a part.

By direction of the Board of Directors.

Dated at Washington, DC, this 12th day of June, 1990.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–14099 Filed 6–18–90; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of 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 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200371

Title: Georgia Ports Authority/ Compagnie Generale, Maritime Terminal Agreement.

Parties: Georgia Ports Authority (GPA), Compagnie Generale Maritime (CGM).

Synopsis: The Agreement provides for GPA to grant CGM an incentive refund of dockage for vessels calling at GPA's Garden City Terminal, Savannah, Georgia; a wharfage incentive; and a consolidated rate for crane rental and land lease.

Agreement No.: 224–200370

Title: Georgia Ports Authority/Star Shipping A/S, Terminal Agreement.

Parties: Georgia Ports Authority (GPA), Star Shipping A/S (Star).

Synopsis: The Agreement provides for GPA to grant Star an incentive refund of dockage for Star vessels calling at GPA's facilities located at Brunswick and Savannah, Georgia.

Agreement No.: 224–200369

Title: Puerto Rico Ports Authority/ Molinos De Puerto Rico, Inc. Terminal Agreement.

Parties: Puerto Rico Ports Authority (Port), Molinos De Puerto Rico (Molinos).

Synopsis: The Agreement provides for Molinos' 5 year lease of a warehouse of approximately 30,000 square feet at the Port's Arecibo dock facility.

Agreement No.: 224–200368

Title: Jacksonville Port Authority/ Green Cove Maritime, Inc. Terminal Agreement.

Parties: Jacksonville Port Authority (JPA), Green Cove Maritime, Inc. (GCM).

Synopsis: The agreement provides for GCM's lease and use of certain JPA facilities at the 11th Street Terminal in Jacksonville, Florida for handling and storage of import/export cargo, general office purposes and maintenance facilities. The term of the Agreement is one year.

By order of the Federal Maritime Commission.

Dated: June 14, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–14126 Filed 6–18–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

AmeriWest Corporation; 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 July 6, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. AmeriWest Corporation, Omaha, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of United Bancshares of Nebraska, Inc., Omaha, Nebraska, and thereby indirectly acquire First Westroads Bank, Inc., Omaha, Nebraska.

In connection with this application, Applicant also proposes to acquire Fremont Computer Services, Inc., Omaha, Nebraska, and thereby engage in providing data processing services, facilities, data bases, etc., pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14105 Filed 6–18–90; 8:45 am]

BILLING CODE 6210–01–M

Citizens Bancorp of Winfield, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 6, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Citizens Bancrop of Winfield, Inc., Winfield, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Winfield, Winfield, Alabama.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63133:

1. First Bank Group, Inc., Brinkley, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of FirstBank of Arkansas, Brinkley, Arkansas, and 100 percent of the voting shares of Bank of Kensett, Kensett, Arkansas.

C. Federal Reserve Bank of Kansas (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First York Ban Corp. York, Nebraska; to acquire 51.34 percent of the voting shares of Albion National Management Co., Inc., Albion, Nebraska, and thereby indirectly acquire The Albion National Bank, Albion, Nebraska, which engages in the sale of general insurance in a town with a population of less than 5,000.

2. Lowry Facilities, Inc., Clinton, Oklahoma; to acquire an additional 1.65 percent of the voting shares of Oklahoma Bancorporation, Inc., Clinton, Oklahoma, for a total of 36.07 percent, and thereby indirectly acquire Oklahoma Bank and Trust Company, Clinton, Oklahoma.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Happy Bancshares, Inc., Canyon, Texas; to acquire 80 percent of the voting shares of First State Bank, Happy, Texas.

Board of Governors of the Federal Reserve System, June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14106 Filed 6–18–90; 8:45 am]

BILLING CODE 6210–01–M

Farmers National Bancshares of Bethany, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 9, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Farmers National Bancshares of Bethany, Inc., Bethany, Missouri; to become a bank holding company by acquiring 98 percent of the voting shares of Farmers National Bank of Ridgeway/Bethany, Bethany, Missouri.

Board of Governors of the Federal Reserve System, June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14107 Filed 6–18–90; 8:45 am]

BILLING CODE 6210–01–M

Meridian Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Meridian Bancorp, Inc., Reading, Pennsylvania; to engage *de novo* in providing data processing services pursuant to § 225.25(b)(7); and management consulting to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14108 Filed 6-18-90; 8:45 am]

BILLING CODE 6210-01-M

Saastopankkien Keskus-Osake-Pankki, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 9, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Saastopankkien Keskus-Osake-Pankki, Helsinki, Finland; to retain ownership of Union Mortgage Company, Inc., Dallas, Texas, and thereby engage in the business of acting as agent or broker for insurance that is directly related to an extension of credit by Union Mortgage and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment or the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire American Land Title Co., Inc., Omaha, Nebraska, and thereby engage in general title insurance agency services as agent pursuant to section 4(c)(8)(G) of the Bank Holding Company Act of 1956, as amended.

Board of Governors of the Federal Reserve System, June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14109 Filed 6-18-90; 8:45 am]

BILLING CODE 6210-01-M

Sunwest Financial Services, 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 benfits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decrased 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 July 6, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Misouri 64198:

1. Sunwest Financial Services, Inc., Albuquerque, New Mexico; to engage *de novo* in providing data processing services, facilities, data bases, etc., pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. PV Financial, Modesto, California; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14110 Filed 6-18-90; 8:45 am]

BILLING CODE 6210-01-M

South Carolina National Bank; Change in Bank Control Notices; Acquisition of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous Federal Register Notice (FR 90–11802) published as page 21098 of the issue for Tuesday, May 22, 1990.

Under the Federal Reserve Bank of Richmond, the entry for The South Carolina National Bank is amended to read as follows:

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. The South Carolina National Bank as Trustee of the South Carolina National Corporation Amended and Restated Savings, Thrift and Deferred Cash Trust Agreement on behalf of The South Carolina National Corporation Amended and Restated Savings, Thrift and Deferred Cash Plan, Columbia, South Carolina, to acquire 15 percent of the voting shares of South Carolina National Corporation, Columbia, South Carolina, and thereby indirectly acquire The South Carolina National Bank, Charleston, South Carolina.

Comments on this application must be received by June 25, 1990.

Board of Govenors of the Federal Reserve System, June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

Alfred R. Urbano, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the 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 July 3, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Alfred R. Urbano, Totowa, New Jersey; to acquire 10.82 percent of the voting shares of Great Falls Bancorp, Totowa, New Jersey, and thereby indirectly acquire Great Falls Bank, Totowa, New Jersey.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. David and Janice LaTourell, Lyons, Kansas; to acquire an additional 12.3 percent of the voting shares of Lyons Bankshares, Inc., Lyons, Kansas, for a total of 22.6 percent, and thereby indirectly acquire The Coronado Bank of Lyons, Lyons, Kansas.

Board of Governors of the Federal Reserve System, June 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14104 Filed 6–18–90; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 052990 AND 060890

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Continental Bank Corporation, Humphreys Inc., Humphreys Inc	90–1468	05/29/90
Delta Woodside Industries, Inc., John P. Barnett, Durham Hosiery Mills, Inc	90–1498	05/29/90
Marley plc, Arthur M. Goldberg, DG Mouldings	90–1508	05/29/90
Cencom Cable Income Partners II, L.P., Insight Communications Company, L.P., Insight Communications Company, L.P	90–1412	05/30/90
Peter Karmanos, Jr., William D. Long, Centura Software	90–1423	05/30/90
The Dexter Corporation, Ivan E. Block, Crown Metro Aerospace Coatings, Inc	90–1429	05/30/90
Ezaki Glico Co., Ltd., MEI Diversified Inc., Glico Harmony Foods Corporation	90–1435	05/30/90
Rochester Telephone Corporation, TELECOM*USA, Inc., Southland Telephone Company	90–1448	05/30/90
Texaco Inc., Panfida Group PLC, TOC Retail, Inc	90–1451	05/30/90
Aramco Service Company, Panfida Group PLC, TOC Retail, Inc	90–1458	05/30/90
W. D. Company, Inc., B.A.T. Industries, p.l.c., J.B. Ivey & Company	90–1460	05/30/90
Kanematsu Corporation, Diemakers, Inc., Diemakers, Inc	90–1462	05/30/90
Ford Motor Company, Mellon Bank Corporation, Mellon Financial Services Corporation	90–1465	05/30/90
Peter R. DeGeorge, Cyril Wagner, Jr., Insilco Corporation	90–1482	05/30/90
Peter R. DeGeorge, Jack E. Brown, Insilco Corporation	90–1490	05/30/90
New York State Teachers' Retirement System, JMB Income Properties, Ltd. IX, JMB Income Properties, Ltd. IX	90–1506	05/30/90
Edwards Dunlop and Company Limited, The Meade Corporation, Seaboard Paper Company	87–1488	05/30/90
Unocal Corporation, Placer Dome Inc., Prairie Holding Company	90–1497	06/01/90
Kenji Mima, The KBH Company, Kapalua Bay Hotel	90–1534	06/01/90
Hoechst Aktiengesellschaft, Union Carbide Corporation, Union Carbide Chemicals and Plastics Company Inc	90–1169	06/04/90
The May Department Stores Company, Prudential Insurance Company of America, May Centers, Inc	90–1473	06/04/90

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 052990 AND 060890—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Prudential Insurance Company of America, The May Department Stores Company, Montgomery Mall Ltd. Partnership	90-1474	06/04/90
Rexene Corporation, Rauma Repola Oy, Poly-Pac Incorporated	90-1479	06/04/90
ASEA AB, Incentive AB, Incentive AB	90-1499	06/04/90
Ashland Oil, Inc., Occidental Petroleum Corporation, OXY USA Inc	90-1531	06/04/90
Fuji Heavy Industries, Ltd., Subaru of America, Inc., Subaru of America, Inc	90-1547	06/04/90
New Plan Realty Trust, Louis D. Perlis, Perlis Realty Company	90-1553	06/04/90
New Plan Realty Trust, Lamar J. Perlis, Perlis Realty Company	90-1554	06/04/90
Enhance Financial Services Inc., Asset Guaranty Inc., Asset Guaranty Inc	90-1546	06/05/90
Mr. Erik Penser, CIBA-GEIGY Limited, Spectra-Physics, Inc	90-1555	06/05/90
Citicorp, The Drexel Burnham Lambert Group, Inc., Burnham Leasing Corporation	90-1557	06/06/90
J. Baker, Inc., Rose's Stores, Inc., Rose's Stores, Inc	90-1483	06/07/90
Toshio Kinoshita, Kanji Kusanagi, Matsuzato Hawaii, Inc	90-1526	06/07/90
Allied Irish Banks p.l.c., Citytrust Bancorp, Inc., Citytrust	90-1543	06/07/90
Eli S. Jacobs, TW Holdings, Inc., Milnot Company	90-1552	06/07/90
Ozite Corporation, Peter R. Harvey, Sage Group, Inc	90-1484	06/08/90
Principal Mutual Life Insurance Company, Central Benefits Mutual Insurance Company, Mid-Ohio Health Care Plan Association	90-1503	06/08/90
Canal + S.A., The Kassar Family Trust, Carolco Pictures Inc	90-1544	06/08/90
Angelica Corporation, Arlene Zacks Gaitz, Service Control Corporation	90-1550	06/08/90
Cellular, Inc., South Slope Cooperative Telephone Co., Inc., South Slope Cooperative Telephone Co., Inc	90-1569	06/08/90
William G. Rottier, Fay E. Leydig, Black Diamond Energies, Inc. and its subsidiaries	90-1583	06/08/90
MCN Corporation, National Intergroup, Inc., Genix Enterprises, Inc	90-1584	06/08/90
Outokumpu Oy, MMR Holding Corporation, HRI Holdings, Inc	90-1636	06/08/90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-14157 Filed 6-18-90; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Addition of an Alternative Site To Be Studied in the Environmental Impact Statement for the Proposed Acquisition of Office Space in Northern Virginia for Use by the Department of the Navy

The General Services Administration, pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR part 1500-1508), announced in the **Federal Register** on January 29, 1990, its intent to prepare an Environmental Impact Statement (EIS) for the acquisition of up to 3.25 million occupiable square feet of office space, with associated parking for about 20,000 employees, in northern Virginia for use by the Department of the Navy. As announced, the Navy is a cooperating agency during preparation of the EIS pursuant to 40 CFR 1501.6.

Six Alternatives were Identified for Evaluation in the EIS

1. *No Action*—No change in current pattern of office space usage by the Navy.

2. *Crystal City*—This site consists of 4 sub-alternatives: (a) Hayes Street site and Eads Street site, (b) Hayes Street site, Eads Street site, former Twin Bridges Marriot Hotel site and North Tract site, (c) Hayes Street site, Eads Street site and a portion of the existing Crystal City complex, and (d) portions of the existing Crystal City complex only. The 16 acre Hayes Street site, is bounded by Hayes Street to the west, 15th Street to the south, Fern Street to the east and 12th Street to the north. The 26.4 acre Eads Street site is bounded by 15th Street to the south, Army Navy Drive to the north, Eads Street to the east, and Fern Street to the west. The 7 acre former Twin Bridges Marriot Hotel site is located on Old Jefferson Davis Highway at the intersection of Boundary Drive. The 8.5 acre North Tract site is located along the east side of Jefferson Davis Highway and is bounded to the north by the railroad siding adjacent to the former Twin Bridges Marriot Hotel and an Exxon Gas Station, to the east by the Richmond, Fredericksburg and Potomac Railroad (RF&P) mainline right-of-way, and to the west by Old Jefferson Davis Highway.

3. *Seminary Road*—This 55 acre site is bounded by I-395 to the east, Seminary Road to the north, and North Beauregard Street to the west.

4. *Van Dorn Street*—This 32.6 acre site is bounded to the north by the creek abutting the Southern Railroad yard, to the east by the proposed intersection of Clearmont Drive and Eisenhower Avenue, and to the south by Eisenhower Avenue.

5. *Eisenhower Avenue*—This 18.8 acre site is bounded by Stovall Street to the west, Mill Road to the north and east, and Eisenhower Avenue to the south.

6. *Port Potomac*—This 27.6 acre site is bounded by Crystal City to the north, South Glebe Road extension to the south, RF&P railroad mainline right-of-way to the east, and Jefferson Davis Highway and Crystal Drive to the west.

Public scoping meetings were held on February 20 and 22, 1990, in Alexandria, Virginia, and Arlington, Virginia, respectively. Several commentors at these scoping meetings recommended the EIS include Cameron Station as an alternative site for the new office complex. GSA and the Navy concur with this recommendation and will include Cameron Station as an additional alternative site for study in the EIS.

Cameron Station, which consists of about 165 acres in Alexandria, Virginia, is bounded by Duke Street to the north, Holmes Run to the east and Backlick Run to the south. Cameron Station is currently under the control of the Department of the Army. Under provisions of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Cameron Station is scheduled to be closed by 1995 and the land may be transferred or sold to other federal, state or local agencies, or to the general public. An EIS that includes closure of Cameron Station is currently being prepared by the Department of the Army.

Scoping comments regarding the addition of Cameron Station as an alternative site for the proposed action should be mailed within 30 days of the date of publication of this notice to: Ms. Debbie Connors (Code WQG, telephone (202) 472–1334), National Capitol Region, General Services Administration, 7th & D Streets SW., Washington, DC 20407.

Dated: June 12, 1990.

Linda L. Eastman,

Director, Facilities Planning Staff.

[FR Doc. 90–14132 Filed 6–18–90; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–20]

Health Assessments Completed and Heath Assessments to be Conducted in Response to Requests for the Public; Correction

A notice was published in the Federal Register on Friday, May 18, 1990, (55 FR 20636) containing a list of health assessments completed or amended by ATSDR during the previous three months (January-March, 1990) for hazardous waste sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and non-NPL sites. It also contained a list of sites for which ATSDR has determined that there is reasonable basis for conducting a health assessment in response to a request (petition) from the public and announced all health assessments completed to date by ATSDR that have been conducted in response to requests from the public. The notice is corrected as follows:

On page 20636, in the third column, under the heading "Health Assessments Completed for NPL Sites" the second paragraph is corrected to read:

Recticon/Allied Steel Corporation—Parkerford, Pennsylvania
Cedartown Industries, Inc.—Cedartown, Georgia

On Page 20636, in the third column, under the heading "Petitioned Health Assessments Accepted," line 18 is corrected to read:

Bluefield—Bluefield, Virginia/West Virginia

Line 25 of this same heading is corrected to read:

Union Carbide—St. Joseph, Missouri

All other information in the notice remains the same.

Dated: June 12, 1990.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 90–14166 Filed 6–18–90; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control

CDC Advisory Committee for Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuburculosis (ACET).

Time and Date: 8:30 a.m.–5 p.m.—July 11, 1990; 8:30 a.m.–1 p.m.—July 12, 1990

Place: Mary Gay C Conference room, Holiday Inn Atlanta-Decatur Conference Plaza, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuburculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: Update on infection control guidelines, TB and diabetes recommendations, outbreak investigations; plan of work for 1990–91; and TB in minorities recommendations. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE, Mailstop E–10, Atlanta, Georgia 30333, Telephones: FTS: 236–2501; Commercial: 404/639–2501.

Dated: June 13, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–14167 Filed 6–18–90; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 90N–0206]

Quantum Pharmics, Ltd.; Withdrawal of Approval of 25 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 25 abbreviated new drug applications (ANDA's) held by Quantum Pharmics, Ltd., 10 Edison St. East, Amityville, NY 11701 (Quantum). Quantum has voluntarily removed these products from the market, agreed to permit FDA to withdraw approval of the applications, and has waived its opportunity for a hearing. This action stems from discoveries by FDA that the applications contain untrue statements.

EFFECTIVE DATE: June 19, 1990.

FOR FURTHER INFORMATION CONTACT:

John H. Hazard, Jr., Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of the submission of false data in support of the approval of the following 25 ANDA's held by Quantum:

ANDA 70–640, Zaxopam (Oxazepam) Capsules, 15 milligrams (mg),
ANDA 70–641, Zaxopam (Oxazepam) Capsules, 30 mg,
ANDA 70–650, Zaxopam (Oxazepam) Capsules, 10 mg,
ANDA 70–921, Trazodone Hydrochloride Tablets, 100 mg,
ANDA 70–942, Trialodine (Trazodone Hydrochloride) Tablets, 50 mg,
ANDA 70–973, Doxepin Hydrochloride Capsules, equiv. 25 mg base,
ANDA 71–380, Meclodium (Meclofenamate Sodium) Capsules, equiv. 50 mg base,
ANDA 71–381, Meclodium (Meclofenamate Sodium) Capsules, equiv. 100 mg base
ANDA 71–522, Clorazepate Dipotassium Capsules, 15 mg,
ANDA 71–534, Minodyl (Minoxidil) Tablets, 10 mg,
ANDA 71–549, Clorazepate Dipotassium Capsules, 3.75 mg,
ANDA 71–550, Clorazepate Dipotassium Capsules, 7.5 mg,
ANDA 71–702, Clorazepate Dipotassium Tablets, 15 mg,
ANDA 71–730, Clorazepate Dipotassium Tablets, 3.75 mg,

ANDA 71–731, Clorazepate Dipotassium Tablets, 7.5 mg,
ANDA 71–738, Fenoprofen Calcium Capsules, equiv. 300 mg base,
ANDA 71–980, Triamterene and Hydrochlorothiazide Tablets, 75 mg/50 mg,
ANDA 72–153, Minodyl (Minoxidil) Tablets, 2.5 mg,
ANDA 72–214, Fenoprofen Calcium Capsules, equiv. 200 mg base,
ANDA 72–431, Q–Pam (Diazepam) Tablets, 2 mg,
ANDA 72–432, Q–Pam (Diazepam) Tablets, 5 mg,
ANDA 72–433, Q–Pam (Diazepam) Tablets, 10 mg,
ANDA 72–466, Timolol Maleate Tablets, 5 mg,
ANDA 72–467, Timolol Maleate Tablets, 10 mg,
ANDA 72–468, Timolol Maleate Tablets, 20 mg.

The agency has determined that untrue statements, discrepancies, and omissions exist concerning the production and testing of lots used to support approval of the applications. This determination was based on information contained in a notice of Inspectional Observations (Form FD 483) issued to Quantum on October 20, 1989, and on information furnished to FDA by the firm. Identification of the untrue statements, discrepancies, and omissions raises serious questions about the reliability of the data, including the bioequivalence data, submitted to support approval of the applications.

After FDA informed Quantum of the agency's concerns, the firm ceased marketing these products, agreed to permit FDA to withdraw approval of the applications, and waived its opportunity for a hearing (see 21 CFR 314.150(d)).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective June 19, 1990.

Dated: June 11, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90–14071 Filed 6–18–90; 8:45 am]
BILLING CODE 4160–01–M

Health Resources and Services Administration

National Organ Transplant Act; Grants for Organ Procurement Organizations

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of grant funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1990 funds are available for grants for assistance for Organ Procurement Organizations (OPOs). The grants are authorized by sections 371 and 374 of the Public Health Service (PHS) Act. Funds are appropriated under Public Law 101–166.

DATES: To receive consideration, grant applications (PHS form 5161–1, HHS Form 424) must be received by the close of business July 27, 1990. Applications shall be considered as meeting the deadline if they are either (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Mr. Remy Aronoff, Chief, Operations and Analysis Branch, Division of Organ Transplantation, Parklawn Building, Room 11A–22, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–7577. Requests for grant application kits and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice should be made in writing to Mr. Waddell Avery, Grants Management Officer, Bureau of Maternal and Child Health and Resources Development, Suite 100A, 12300 Twinbrook Parkway, Rockville, Maryland 20852.

Applicants for grants for OPOs will use Form PHS 5161–1 with revised face sheet HHS Form 424, approved under OMB Control Number 0348–0043. The original and two copies of the completed application must be submitted to Mr. Avery, the Grants Management Officer.

SUPPLEMENTARY INFORMATION:

Background and Objective

Section 371 of the Public Health Service (PHS) Act authorizes a program of grants for the planning, establishment, initial operation and expansion of Organ Procurement Organizations (OPOs) to increase the number of organ donors.

The principal purpose of this grant program is to increase the availability of donor organs in this country by improving the overall organ procurement system.

Types of Grants

To accomplish the objective of increasing donor organs, grants will be awarded consistent with the statute as specified in this Notice.

Grants will be awarded to OPOs to conduct the following activities: Public education, professional education, research, and OPO consolidation.

Funding consideration will also be given to applications to carry out OPO performance evaluations or needs assessments and establishment of model "routine referral" programs. Some specific examples of activities that are suggested this year are the following:

1. Increasing the knowledge of minority population groups about the concept of organ donation and transplantation, the result of which would be to increase their responsiveness to the request process. This could include minority clergy education, development of techniques for approaching potential minority donor families, and expanding the range of methods for educating the minority community in organ donation and transplantation.

2. Developing organ procurement organization/hospital liaison programs to train hospital personnel in making the organ donation request.

3. Designing and implementing education programs directed to neurosurgical specialists. These programs could include but are not limited to, brain death declaration relating to organ donation, the family consent process, and interaction with organ procurement organizations.

4. Designing and implementing education programs which use the services of donor families and/or transplant recipients.

5. Consolidating two or more existing OPOs in order to meet the Health Care Financing Administration's requirements for certification.

6. Designing and implementing a model program for the practice of "routine referral."

7. Measuring the performance of OPOs through the use of appropriate criteria, such as administrative efficiency and service area donor potential, and recommending new organizational approaches for improving performance.

8. Evaluating OPO service hospitals' compliance with State and Federal required request/routine inquiry legislation.

9. Consolidating OPOs and tissue recovery organizations in areas where such consolidation is mutually agreeable.

Availability of Funds

Up to $500,000 is available for grants to OPOs. Each grant will be for a period of one year and will not exceed $75,000.

Eligible Applicants

Only non-profit OPOs designated by the Health Care Financing Administration under section 1138(b) of the Social Security Act may apply for these grants.

Application Evaluation Criteria

Grant applications will be evaluated by an objective review committee according to the following criteria:

- The consistency with the program objectives and priorities;
- The adequacy of the method(s) proposed to carry out the project;
- The appropriateness of the work plan and schedule for organizing and completing the project;
- The capability of the organization to complete the project as proposed;
- The adequacy of supporting documentation justifying the proposal;
- The reasonableness of the budget; and,
- The qualifications of the project director and staff.

Allowable Costs

Grant funds will not be used to maintain the services of personnel already employed by applicant OPOs. Applicants are encouraged to submit applications for activities that are not reimbursable under Medicare.

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q. The three separate sets of cost principles prescribed for recipients of grants for OPOs are: OMB Circular A–21 for institutions of higher education; 45 CFR part 74, Appendix E for hospitals; and OMB circular A–122 for nonprofit organizations.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J, Monitoring and Reporting Program Performance.

Executive Order 12372

Grants awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants should promptly contact their State Single Point of Contact (SPOC) and follow the SPOC's instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalog of Federal Domestic Assistance Number for this program is 13.134.

Dated: May 28, 1990.

Robert Harmon,

Administrator.

[FR Doc. 90–14127 Filed 6–18–90; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget, Paperwork Reduction Project (1076–0088), Washington, DC 20503, telephone (202) 395–7340.

Title: Contracts under Self-Determination Act, 25 CFR, Part 271

OMB Approval Number: 1076–0088

Abstract: This part contains the requirements for the evaluation of the content of contract applications as well as information necessary to monitor and evaluate contracts administered under P.L. 93–638. These are contracts submitted by Indian tribes.

Frequency: Upon initial application

Description of respondents: Indian tribes desiring to contract Bureau programs

Estimated completion time: 18 Hours

Annual response: 1,989

Annual burden hours: 31,865

Bureau clearance officer: Gail Sheridan (202) 343–1685

Dated: June 1, 1990.

Ronal Eden,

Deputy to the Assistant Secretary— Indian Affairs (Tribal Services).

[FR Doc. 90–14134 Filed 6–18–90; 8:45 am]

BILLING CODE 4310–02–M

Plan for the Use of the Confederated Salish and Kootenai Tribes Indian Judgment Funds in Docket 50233, Before the United States Court of Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This Notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This plan was effective on April 30, 1990.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgement and Research, MS 4627–MIB, 1849 C Street, NW., Washington, 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973 (Pub.L. 93–134, 87 stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on December 15, 1971, in satisfaction of the award granted to the Confederated Salish and Kootenai Tribes before the United States Court of Claims in Docket 50233, paragraphs 8 and 9. The plan for the use and distribution of the funds was submitted to Congress with a letter dated January 11, 1990, and was received (as recorded in the Congressional Record) by the Senate on January 23, 1990, and by the House of

Representatives on January 23, 1990. The plan became effective on April 30, 1990, as provided by the 1973 Act, as amended by Pub.L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use of Judgment Funds awarded to the Confederated Salish and Kootenai Tribes in Docket 50233, paragraphs 8 and 9, before the United States Court of Claims.

The funds appropriated December 15, 1971, in satisfaction of the award granted to the Confederated Salish and Kootenai Tribes in Docket 50233, paragrpahs 8 and 9, before the United States Court of claims, invested by the Secretary of the Interior under a Secretarial Plan which became effective August 25, 1976, shall be used as herein provided.

The principal, interest, and investment income accrued shall be available for use by the tribal governing body on a budgetary basis, subject to the approval of the Secretary, for the purpose of land acquisition.

Dated: June 7, 1990.

Walter R. Mills,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90–14135 Filed 6–18–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CO–070–00–4212–13; C–50786]

Exchange of Lands in Eagle, Garfield, Jackson, Pitkin, and Summit Counties, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of exchange of lands.

SUMMARY: Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified parcels of public and private land as preliminarily suitable for exchange.

FOR FURTHER INFORMATION: Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602 or the Kremmling Resource Area Office, 116 Park Avenue, P.O. Box 68, Kremmling, Colorado 80459.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following-described lands have been determined to be preliminarily suitable for exchange under sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Selected Public Land

Parcel 1—3.23 Acres—Pitkin County

T. 9 S., R. 85 W.,
Sec. 14: Lot 10
Sec. 23: Lot 6

Parcel 2—1.57 Acres—Pitkin County

T. 9 S., R. 85 W.,
Sec. 28: Lot 8

Parcel 3—6.34 Acres—Garfield County

T. 7 S., R. 89 W.,
Sec. 15: Lots 4 and 8

Parcel 4—6.20 Acres—Summit County

T. 5 S., R. 77 W.,
Sec. 7: Lot 135

Parcel 5—40.00 Acres—Jackson County

T. 5 N., R. 78 W.,
Sec. 1: NE¼SE¼

Offered Private Land

Parcel A—42.30 Acres—Eagle County

T. 5 S., R. 85 W.,
Lot 2, O.R.E.O. Acres Subdivision

Parcel B—35.43 Acres—Pitkin County

T. 8 S., R. 87 W.,
Lot 12, West Sopris Ranch Subdivision

Parcel C—80.00 Acres—Garfield County

T. 7 S., R. 98 W.,
Sec. 21: SE¼SW¼, SW¼SE¼

Parcel D—40.00 Acres—Garfield County

T. 7 S., R. 100 W.,
Sec. 16: NW¼NE¼

These 57.34 acres of public land under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Shepard & Assoc.

In the proposal, 197.73 acres of offered private land with public values would be exchanged for 57.34 acres of public land which have been identified for disposal. The exchange proposal has been made to provide public access to public land, acquire crucial big game winter range, and resolve unauthorized uses of public land.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values.

Terms and Conditions

The following reservations would be made in a patent issued for public land:

For all Parcels

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation for all existing and valid land uses, including grazing leases, unless waived.

For Parcel 1

1. A reservation for public access on Pitkin County Road 18.

2. A reservation for power line right-of-way C–50753.

For Parcel 2

1. A reservation for public access on Colorado State Highway 82.

For Parcel 3

1. A reservation for access road right-of-way C–25777.

2. A reservation for oil and gas lease C–42901

For Parcel 4

1. A reservation for Interstate-70 right-of-way C–099603.

Selected public land parcels 1 and 2 were previously segregated from appropriation under the public land laws, including the mining laws and mineral leasing laws, through notice C–50773. The publication of this notice in the **Federal Register** will segregate the remaining public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

Dated: June 1, 1990.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 90–14142 Filed 6–18–90; 8:45 am]

BILLING CODE 4310–JB–M

[MT-920-00-4332-08]

Public Review of Mineral Survey Reports on Wilderness Study Areas (WSAs), Montana

ACTION: Notice of the availability of three Mineral Survey Reports produced by the U.S. Geological Survey (USGS)/ U.S. Bureau of Mines (USBM), on Bureau of Land Management (BLM) WSAs in Montana. Announcement of a 60-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Montana BLM is requesting the public to review combined USGS and USBM "Mineral Survey Reports" which have been completed for preliminarily suitable WSAs. If the public identifies significant differences in interpretation of the data presented in these reports, or submits significant new minerals data for consideration, the BLM will request that USGS/USBM evaluate these comments in relation ot their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Billings, Butte, Lewiston, and Miles City, Montana.

DATES: New information will be accepted on the reports enumerated in the notice until August 22, 1990.

ADDRESSES: Send information on reports to the Deputy State Director, Division of Mineral Resources, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Jerry Klem, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107 Telephone (406) 255–2825.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the BLM prior to making its final wilderness suitability recommendations to the Secretary of the Interior, the Montana State Director is providing this public review and comment period. Usually, there is a 1- to 2-year lag time between actual field work and final printing of a Mineral Survey Report. New information may have been collected by the public during this lag time, or the public may have a new interpretation of the data presented in the Mineral Survey Reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the BLM. Significant new minerals data or new interpretations of the minerals data will be forwarded to the USGS and USBM for further considerations. Evaluations received by the BLM from the USGS and USBM will be considered by the State Director in the final wilderness suitability recommendations.

Information requested from the public via this invitation is not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible, and include:

1. The name and number of the subject WSA and Mineral Survey Report.
2. Mineral(s) of interest.
3. A map of land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject WSA.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross-sections, drill hole records and sample analyses, etc., should be included. Public literature and reports may be cited. Each comment should be limited to a specific WSA. All information submitted and marked confidential will be treated as proprietary data, and will not be released to the public without consent.

The following is a list of available Mineral Survey Reports by WSA on which new information will be accepted:

Cow Creek and Antelope Creek Wilderness Study Areas, Blaine and Phillips Counties, Montana (USGS Bull. 1722–C).

Seven Blackfoot Wilderness Study Area, Garfield County, Montana (USGS Bull. 1722D).

Pryor Mountain, Burnt Timber Canyon, and Big Horn Tack-On Wilderness Study Areas, Carbon County, Montana (USGS Bull. 1723).

Reports available for review in BLM offices will not be available for sale or removal from the office. Copies of the listed reports may be purchased from: U.S. Geological Survey, Books and Open File Reports, P.O. Box 25425, Federal Center, Denver, CO 80225.

Dated: June 11, 1990.

Robert W. Faithful,

Associate State Director.

[FR Doc. 90–14129 Filed 6–18–90; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Hualapai Mexican Vole for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*). The vole is found in the Hualapai Mountains on Federal, County and private lands in Mohave County, Arizona. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 20, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019 (602/379–4720 or FTS 261–4720). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lesley Fitzpatrick or Sally Stefferud, Phoenix Ecological Services Field Office (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species

program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Hualapai Mexican vole is an endangered mammal that is only known from the Hualapai Mountains of Mohave County, Arizona. Although the species was once more widespread on the mountains, it is now confined to four small populations adjacent to moist areas around springs and seeps.

The size and isolated nature of the vole populations make them very vulnerable to threats. Grazing, recreation, watershed deterioration and natural drought cycles are all major threats to the vole. The objective of the recovery plan is to set forth measures that will provide for protection of existing vole populations, restore degraded habitat for vole colonization, and determine appropriate downlisting criteria. Actions called for in the plan include monitoring, protection and restoration of vole populations and their habitat, research on the life history and ecology of the vole, possible captive propagation, evaluation of potential vole habitats outside of the known range, and information and education.

The recovery plan is currently under review by Federal and State agencies and the public. The plan will be issued as final following incorporation of comments and material received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 8, 1990.

Michael J. Spear,

Regional Director.

[FR Doc. 90–14140 Filed 6–18–90; 8:45 am]

BILLING CODE 4310–55–M

Meeting, Klamath River Basin Fisheries Task Force

AGENCY: Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 9 a.m. to 5:30 p.m. on Tuesday, June 26, 1990, and from 8 a.m. to 3:45 p.m. on Wednesday, June 27, 1990.

ADDRESSES: The Tuesday, June 26, meeting will be held in the conference room of the Red Lion Motor Inn, 1922 Fourth Street, Eureka, California. The Wednesday, June 27, meeting will be held at the Humboldt Bay Harbor Recreation and Conservation District meeting room, 601 Stratare Drive, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

The Task Force will hear reports on progress of ongoing projects, including long-range planning for harvest management and fish restoration. The Task Force will also hear a subcommittee recommendation on Klamath Fishery Restoration Program work to be funded in Fiscal Year 1991. Following public comment on this issue, the Task Force will recommend a set of projects to be funded by the California Department of Fish and Game and the Fish and Wildlife Service. An opportunity for public comment is scheduled to begin at 4:30 p.m. on June 26.

Dated: May 25, 1990.

Marvin L. Plenert

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–14130 Filed 6–18–90; 8:45 am]

BILLING CODE 4310–55–M

Louisiana Application

Notice is hereby given as required under section 28 of the Mineral Leasing Act of 1920, (41 Stat. 449; 30 U.S.C. 185), as amended by Public Law 93–153, that Mobil Exploration & Producing U.S. Inc., has applied for a right-of-way for a 12-inch pipeline, to be located on the lands of the Lacassine National Wildlife Refuge in Cameron Parish, Louisiana, described as follows:

T. 12 S., R.4 W., Louisiana Meridian

In section 16, the centerline of the pipeline easement through and across a 16.76 acre tract of land

Commencing for reference at the north quarter corner of Section 16, thence N. 89° 30'00" E., along the north line of said Section 16, a distance of 22.75 feet to the True Point of Beginning, thence S. 54° 06'20" E., 94 feet, to the Point of Terminus in the most westerly east line of 16.76 acre tract of land, a distance of 55.78 feet from the most northerly northeast corner of said 16.76 acre tract of land;

Said centerline being in all a total distance of 94.00 feet (5.70 rods) in length, more or less.

AGENCY: Fish and Wildlife Service

ACTION: The Fish and Wildlife Service is in the process of issuing a right-of-way permit across the Lacassine National Wildlife Refuge in Cameron Parish, Louisiana.

SUMMARY: This notice advises the public that the Fish and Wildlife Service plans to issue a permit to Mobile Exploration & Producing U.S. Inc., for a 12-inch pipeline on a portion of the Lacassine National Wildlife Refuge.

EFFECTIVE DATE: July 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Vits, Supervisory Realty Specialist, Division of Realty, 75 Spring Street, SW., Room 1240, Atlanta, Georgia 30303, Telephone (404) 331–3543 or FTS 841–3543.

Dated: June 7, 1990.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 90–14141 Filed 6–18–90; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 9, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forward to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 5, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Colbert County

Rock Creek Archeological District, Address Restricted, Maude vicinity, 90001051

COLORADO

Conejos County

Colorado River Bridge at Bastrop, SR 150 over the Colorado R., Bastrop, 90001031

GEORGIA

Cobb County

Zion Baptist Church, 149 Haynes St., Marietta, 90001026

KENTUCKY

Bell County

Pineville Courthouse Square District, Along Kentucky, Pine, Virginia, and Walnut Sts., Pineville, 90001019

Nelson County

Old L&N Station (Early Stone Buildings of Kentucky TR), US 150, Bardstown, 87002613

MARYLAND

Harford County

Harford Furnace Historic District, Creswell and Goat Hill Rds., Bel Air vicinity, 90001020

Streett, Col John, House, N side of Holy Cross Rd., E of Deer Cr., Street vicinity, 90001022

Whitaker's Mill Historic District, 1210, 1212, and 1213 Whitaker Mill Rd., Joppa, 90001021

Montgomery County

Thomas and Company Cannery, Jct of W. Diamond and N. Frederick Aves., Gaithersburg, 90001025

Somerset County

Crisfield Historic District, Roughly bounded by Chesapeake Ave., Maryland Ave., 4th and Cove Sts., including area between Asbury Ave. and E. Main St., Crisfield, 90001018

Washington County

Hagerstown City Park Historic District, Roughly bounded by N. Howard St., Guilford Ave., Memorial, S. Walnut St., and the Norfolk & Western RR tracks, Hagerstown, 90001017

MISSOURI

Fraklin County

Panhorst Feed Store, 465 St. Clair St., St. Clair, 90001023

St. Charles County

Wentzville Tobacco Company Factory, 406 Elm St., Wentzville, 90001024

NEW MEXICO

Sandoval County

San Jose de las Huertas, Address Restricted, Placitas vicinity, 90001029

Taos County

Hennings, E. Martin, House and Studio Historic District, SE corner of Dolan St. and Kit Carson Rd., Taos, 90001028

NORTH CAROLINA

Catawba County

Bolick Historic District (Catawba County NPS), First Ave. S. between US 64/70 and 12th St., Conover, 90001032

Bost-Burris House (Catawba County MPS), Jct. of SR 1149 and SR 1154, Newton vicinity, 90001033

Foil-Cline House (Catawba County NPS), 406 S. Main Ave., Newton, 90001034

Grace Reformed Church (Catawba County MPS), 201–211 S. Main Ave., Newton, 90001035

Rock Barn Farm (Catawba County MPS), W side of SR 1709, 4 mi. N of jct. with SR 1715, Claremont vicinity, 90001036

Self—Trott—Bickett House (Catawba County MPS), 331 S. College Ave., Newton, 90001037

Wake County

Wyatt, Leonidas R., House, 107 S. Bloodworth St., Raleigh, 90001030

NORTH DAKOTA

McIntosh County

St. Andrews Evangelical German Lutheran Church, W of SR 3 near S. Branch, Beaver Cr., Zeeland vicinity, 90001027

TEXAS

Harris County

Garden, David A., House (Houston Heights MPS), 718 W. 17th Ave., Houston, 90001048

Clanton, Moses A., House, (Houston Heights MPS), 1025 Arlington, Houston, 90001040

Coombs, Charles E., House (Houston Heights HPS), 1037 Columbia, Houston, 90001041

Doughty, Lula J., House (Houston Heights MPS), 1233 Yale St., Houston, 90001046

Gerloff House (Houston Heights MPS), 221 East 12th Ave., Houston, 90001047

House at 1222 Harvard St. (Houston Heights MPS), 1222 Harvard St., Houston, 90001043

Jensen, James L., House (Houston Heights MPS), 721 Arlington, Houston, 90001039

McCollum, D.C., House (Houston Heights MPS), 433 West 24th St., Houston, 90001049

Morris, Glenn W., House (Houston Heights MPS), 1611 Harvard St., Houston, 90001044

Reed, Thomas B., House (Houston Heights MPS), 933 Allston St., Houston, 90001038

Rogers, Ghent W., House (Houston Heights MPS), 1150 Cortlandt, Houston, 90001042

Victoria County

Gervais House (Victoria, Texas, MPS), 507 W. Forrest, Victoria, 90001052

Roselle—*Smith, House (Victoria, Texas, MPS),* 301 E. Commercial, Victoria, 90001050

The following properties were erroneously listed as pending on the list dated June 5, 1990:

COLORADO

Las Animas Co.

Arnet, Adam and Bessie, Homestead (Pinon Canyon Maneuver Site MPS), Address Restricted, La Junta vicinity, 90000938

Cross, John Sanders, Homestead (Pinon Canyon Maneuver Site MPS) Address Restricted, La Junta vicinity, 90000943

Doyle, Mary, Claim (Pinon Canyon Maneuver Site MPS) Address Restricted, La Junta vicinity, 90000939

Haines, Asa T., Homestead (Pinon Canyon Maneuver Site MPS) Address Restricted, La Junta vicinity, 90000941

PCMS Historic Archeological District (Pinon Canyon Maneuver Site MPS) Address Restricted, La Junta vicinity, 90000937

PCMS Prehistoric Archeological District (Pinon Canyon Maneuver Site MPS) Address Restricted, La Junta vicinity, 90000936

Rourke, Eugene, Ranch (Pinon Canyon Maneuver Site MPS) Address Restricted, La Junta vicinity, 90000940

Samuel Taylor Brown's Sheep Camp (Pinon Canyon Maneuver Site MPS) Address Restricted, La Junta vicinity, 90000944

Stevens, Moses B., Homestead (Pinon Canyon Maneuver Site MPS) Address Restricted, La Junta vicinity, 90000942

MINNESOTA

Hennepin Co.

Pioneer Steel Elevator (Grain Elevator Design in Minnesota MPS), 2547 5th St. NE., Minneapolis, 90000945

St. Louis Co.

Hull—Rust—Mahoning Mines Historic District, Roughly bounded by mine dumps NW of Hibbing on S and E and the Laurentian Divide and Mahoning Lakes on N and W, Hibbing vicinity, 90000946

A proposed move is being considered for the following property:

FLORIDA

Gadsden Co.

Davis, Joshua, House 2.5 mi. NW of Mt. Pleasant on US 90 Mt. Pleasant vicinity, 75000554

[FR Doc. 90–14076 Filed 6–18–90; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Activities Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275–7322. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, Washington, DC 20423 and the Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Type of Clearance: Revision of currently approved collection.
Bureau/Office: Office of Proceedings.
Title of Form: Authority Application.
OMB Form Number: 3120–0047.
Agency Form No.: OP–1.
Frequency: Initiated by applicant for new or expanded authority.
No. of Respondents: 16,000.
Total Burden Hours: 64,000.

Noreta R. McGee,

Secretary.

[FR Doc. 90–14169 Filed 6–18–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

June 12, 1990.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514–4312.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of Expiration Date of a Currently Approved Collection

(1) National Crime Survey.
(2) NCS–½, NCS–7 NCS–500, NCS–1(X), NCS–2(X), NCS–7(X), NCS–500(X), NCS–572(L). Bureau of Justice Statistics.
(3) Semi-annually.
(4) Individuals or households. The National Crime Survey collects, analyzes, publishes and disseminates statistics on the amount and type of crime committed against households and individuals in the United States. Respondents include 151,200 people, 12 years of age or older, living in 60,000 households in 312 selected areas.
(5) 151,200 estimated annual respondents, 1.95 responses per year per respondent, at .217 hours per response.
(6) 64,146 estimated annual public burden hours.
(7) Not applicable under 3504(h).

The following collections are all from the Drug Enforcement Administration:

(1) U.S. Official Order Forms for Schedules I and II Controlled Substances, Order Form Requisition (These are accountable forms).
(2) DEA–222 (Order Form), DEA–222a (Requisition). Regulatory Support Section, Office of Diversion Control.
(3) On occasion.
(4) Individuals or households, State or local governments, businesses or other for-profit, Federal agencies or employees. DEA–222 is used to transfer or purchase Schedule I and II controlled substances and data is needed to provide an audit of the transfer or purchase. DEA–222a is used to obtain the DEA–222. Respondents are DEA registrants desiring to handle these controlled substances.
(5) 436,000 estimated responses at .25 hours per response.
(6) 109,000 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Arcos Transaction Reporting.
(2) DEA–333. Regulatory Support Section, Office of Diversion Control.
(3) On occasion.
(4) Business or other for-profit. Data collection is necessary for the United States to meet obligations under two international treaties: Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances. Treaties require information on the manufacture and consumption of certain substances. Information tracks substances from manufacture to sale to dispensing level. Affected public are manufacturers and distributors.
(5) 617 annual respondents at 1 hour per response.
(6) 2,468 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Registrants Inventory of Drugs Surrendered.
(2) DEA–41. Diversions Operations Section, Office of Diversion Control.
(3) On occasion.
(4) Businesses or other for-profit. Section 1307.21 od 21 CFR requires that any registrant desiring to voluntarily dispose of controlled substances shall list these controlled substances on DEA–41 and submit to the nearest DEA office. The form is used to account for surrendered destroyed controlled substances and the use of this form is mandatory.
(5) 20,000 estimated annual responses at .5 hours per response.
(6) 10,000 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Controlled Substances Import/Export Declaration.
(2) DEA–236. Drug Control Section, Office of Diversion Control.
(3) On occasion.
(4) Businesses or other for-profit. This form provides the DEA with controlled measures over the importation and exportation of controlled substances as required by both domestic and international drug control laws. Affected public consists of businesses or other for-profit organizations.
(5) 218 estimated annual responses at .25 hours each.
(6) 436 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 90-14137 Filed 6-18-90; 8:45 am]

BILLING CODE 4410-09-M

Loding of Consent Decree Pursuant to Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Joppa Sanitary District, Village of Joppa, Illinois, et al.*, Civil Action No. C 87-4162, was lodged with the United States District Court for the Southern District of Illinois on May 31, 1990. The complaint filed by the United States alleged that Defendant Joppa Sanitary District violated section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a) and Defendant Joppa Sanitary District's National Pollutant Discharge Elimination System ("NPDES") permit by failing to comply with effluent limits for certain parameters as required by the NPDES permit.

The proposed Consent Decree establishes a compliance schedule under which Defendant Joppa Sanitary District will construct additional wastewater treatment facilities and will make repairs to an existing wastewater treatment facility. The proposed Consent Decree also requires Defendant Joppa Sanitary District to meet, at a minimum, interim effluent limits until June 15, 1991 at which Defendant Joppa Sanitary District must meet final effluent limits contained in its NPDES permit.

In addition, the proposed Consent Decree requires Defendant Joppa Sanitary District to pay civil penalty of $4,500.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resource Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Joppa Sanitary District, Village of Joppa, Illinois, et al.*, D.J. Reference No. 90-5-1-1-2719.

The proposed Consent Decree may be examined at the office of the United States Attorney, room 330, 750 Missouri Avenue,. East St. Louis, Illinois 62201 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region 5, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or my mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-14138 Filed 6-18-90; 8:45 am]

BILLING CODE 4410-01-M

Alcan Alumium Corp., et al.; Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 8, 1990, a Consent Decree in *United States* v. *Alcan Aluminum Corp. et al.*, Civil Action No. 3:CV-89-1647, was lodged with the United States District Court for the Middle District of Pennsylvania.

The compliant filed by the United States alleges that Alcan Aluminum Corp., BASF Corp., Beazer Materials and Services, Inc., Borg-Warner Corp., Carrier Corp., Chemical Leaman Tank Lines, Inc., Chemical Management, Inc., Chrysler Motors Corp., Dana Corp., Dart Industries Inc., Exxon Corp., Ford Motor Company, Goulds Pumps, Inc., Hitchcock Gas Engine Company, Inc., Ingersoll-Rand Company, NEAPCO, Inc., Rome Strip Steel Co., Inc., The Stanley Works, Inc., TRW, Inc., and United Technologies Corp., are responsible to reimburse the United States for costs incurred by the Environmental Protection Agency ("EPA") in responding to the release and threatened release of hazardous substances from September 1985 through January 7, 1987, from the Butler Tunnel Superfund Site in Pittston, Pennsylvania (the "Site"). The compliant alleges that the defendants arranged for the transport to and disposal of liquid wastes containing hazardous substances at the Site. The United States, on behalf of EPA, sought judgment against the defendants jointly and severally for reimbursement of response costs in excess of $814,000.00 under section 107(a) of CERCLA, 42 U.S.C. 9607(a).

In the Consent Decree, defendants Chemical Management, Inc. and NEAPCO, Inc. have agreed to reimburse the Hazardous Substance Response Trust Fund (the "Fund") in the amount of $200,000.00. In an earlier consent decree entered by the Court on January 17, 1990, BASF Corp., Beazer Materials and Services, Inc., Borg-Warner Corp., Carrier Corp., Chemical Leaman Tank Lines, Inc., Chrysler Motors Corp., Dana Corp., Dart Industries, Inc., Exxon Corp., Ford Motor Company, Coulds Pumps, Inc., Hitchcock Gas Engine Company, Inc., Ingersoll-Rand Company, Rome Strip Steel Co., Inc., The Stanley Works, Inc., TRW, Inc., and United Technologies Corp., agreed to reimburse the Fund in the amount of $600,000.00. Also in the earlier decree, the United States, on behalf of the Department of Defense, agreed to reimburse the Fund $28,500.00. See 54 FR 50285 (December 5, 1989). Defendant Alcan Aluminum Corporation has not agreed to resolve its liability to the United States.

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, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Alcan Aluminum Corp., et al.*, DOJ Ref. No. 90-11-3-134. The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Pennsylvania, U.S. Courthouse and Post Office, Suite 309, Scranton, Pennsylvania. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, room 1647(d), Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044-7611. When requesting a copy of the consent decree by mail, please enclose a check in the amount of $2.44 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Divison.

[FR Doc. 90-14077 Filed 6-18-90; 8:45 am]

BILLING CODE 4410-01-M

BFG Electroplating & Manufacturing Co., Inc.; Lodging of Consent Decree

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given that on June 7, 1990, a proposed consent decree in *United States* v. *BFG Electroplating & Manufacturing Co., Inc.*, Civil Action No. 88–1848, was lodged with the United States District Court for the Western District of Pennsylvania.

The proposed consent decree requires the defendant to reimburse the Hazardous Substance Superfund $75,000.00 in response costs incurred by the Environmental Protection Agency (EPA) to address the release or threat of release of hazardous substances at the Cherry Street Site in Punxsutawney, Pennsylvania. The parties to the consent decree are the United States, BFG Electroplating & Manufacturing Co., Inc., and Jeffrey Grube.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *BFG Electroplating & Manufacturing Co., Inc.* DOJ Ref. 90–11–3–338.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 United States Post Office and Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–14073 Filed 6–18–90; 8:45 am]

BILLING CODE 4410–01–M

Menominee Paper Co., et al.; Notice of Consent Decree in Clean Water Act Enforcement Action

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Menominee Paper Company and Bell Packaging Corporation*, Civil Action No. M88–108 CA2 (W.D. Michigan), has been lodged with the United States District Court for the Western District of Michigan. The United States' Complaint in the action alleged that the defendants violated the Clean Water Act by discharging pollutants to the Menominee River in excess of the effluent limitations in their National Pollutant Discharge Elimination System (NPDES) permit, by failing to properly monitor, test for and report effluent data, and by failing to observe federal pretreatment regulations.

The Consent Decree requires defendants to take a number of specified measures to ensure continuing compliance with the Clean Water Act. These include conducting a comprehensive environmental audit and submitting and implementing a remedial action plan to address any areas of noncompliance. Defendants are also required to pay a civil penalty of $2,100,000 to the United States.

The Department of Justice will receive for thirty (30) days from the publication date of this notice written comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States* v. *Menominee Paper Company and Bell Packaging Corporation*, Civil Action No. M88–108 CA2 (W.D. Michigan), DJ No. 90–5–1–1–3033.

The proposed Consent Decree may be examined without charge at the office of the United States Attorney, Federal Building, 399 Federal Building, Grand Rapids, Michigan 49503; at the Region V Office of the Environmental Protection Agency, Third Floor, W. Jackson, Chicago, Illinois 60604; and at the U.S. Department of Justice, Environmental Enforcement Section, Environment and Natural Resources Division, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the Consent Decree may be requested in person or by mail from the Department of Justice, at the above address. A copying charge of $1.90 (10 cents per page reproduction cost) must be paid, by check or money order payable to the Treasurer of the United States, at the time of the request.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–14074 Filed 6–18–90; 8:45 am]

BILLING CODE 4410–01–M

Pioneer Exploration Co. et al.; Lodging of Final Judgment by Consent

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 8, 1990, a Consent Decree in *United States* v. *Pioneer Exploration Co., et al.*, Civil Action No. CV–88–240–GF–PGH, was lodged with the United States District Court for the District of Montana, Great Falls Division.

The amended complaint filed by the United States on January 29, 1990, alleges that defendants Pioneer Exploration Company ("Pioneer"), Delta Petroleum, Inc. ("Delta"), and State Energy and Investment, Inc. ("State Energy"), violated EPA's Underground Injection Control ("UIC") Program in the State of Montana, 40 CFR part 147 subpart BB, promulgated under section 1422(c) of the Safe Drinking Water Act, 42 U.S.C. 300h–1(c). The amended complaint also alleges that defendant Younas Chaudhary, Pioneer, Delta, and State Energy's sole officer, director, and shareholder, is personally liable for his companies' violations of law. The United States sought a permanent injunction and civil penalties of up to $25,000.00 per day, per violation.

The Consent Decree provides that all defendants shall be enjoined from conducting any underground injection at their wells in northeastern Montana; permanently plug and abandon five injection wells within 2 years of entry of the decree; permanently plug and abandon four production wells within two years of entry of the Decree, unless the wells are returned to production; pay stipulated penalties for violations of the Decree; report to EPA on a regular basis; and pay a civil penalty of $159,812.50 within eighteen months of entry of the Decree, or $200,000.00 plus interest at 10% annually, over five years. The Decree also provides that the defendants, including Mr. Chaudhary, are jointly and severally liable to fulfill the obligations of the decree.

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, Environment and Natural Resources

Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pioneer Exploration Co., et al.*, DOJ Ref. No. 90–5–1–1–3231. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Montana, 212 Federal Building, Great Falls, Montana. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, room 6314, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Box 7611. Ben Franklin Station, Washington, DC 20044. When requesting a copy of the Consent Decree by mail, please enclose a check in the amount of $4.50 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–14078 Filed 6–18–90; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 5, 1990, a proposed Consent Decree in *United States* v. *American Waste Processing, Ltd., et al.* and *United States* v. *United Technologies Automotive, Inc., et al.* (Consolidated Civil Action Nos. IP88–806 C and IP90–080 C) was lodged with the United States District Court for the Southern District of Indiana, Indianapolis Division. The proposed Consent Decree concerns the hazardous waste site known as the Environmental Conservation and Chemical Corporation ("EnviroChem") site located near Zionsville, Indiana. The proposed Consent Decree requires the settlors, which include approximately one-hundred and eighty (180) generators and transporters of hazardous substances sent to the EnviroChem site and consist largely of *de minimis* parties, to reimburse the United States for a portion of its past costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20530, and should refer to *United States* v. *American Waste Procesing, Ltd., et al.* and *United States* v. *United Technologies Automotive, Inc., et al.* D.J. reference 90–11–2–48B.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Indiana, Indianapolis, Indiana, 274 United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.30 (for the Consent Decree and appendices) or $22.50 (for the Consent Degree, appendices, and all signature pages) (10 cents per page reproduction cost) payable to the Treasurer of the United States.

George W. Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–14139 Filed 6–18–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

OSHA

4-Dimethylaminoazobenzene

1218–0044

On Occasion.

Business or other for-profit; small business or organizations.

Respondents *0*; *1* total hour; *0* hours per response; *0* form.

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 4-Dimethylaminoazobenzene (DAB) standard.

The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Dimethylaminoazobenzene standard. The production of 4-Dimethylaminoazobenzene in the U.S. is negligible and therefore, the agency is assuming *1* hour burden.

N-Nitrosodimethylamine

1218–0081

On Occasion.

Business or other for-profit; small business or organizations.

Respondents *0*; *1* total hour; *0* hours per response; *0* form.

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to N-Nitrosodimethylamine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the N-Nitrosodimethylamine standard.

The production of N-Nitrosodimethylamine in the United States is negligible and therefore, the agency is assuming *1* hour burden.

Benzidine

1218–0082

On Occasion.

Business or other for-profit; small business or organizations.

Respondents *0*; *1* total hour; *0* hours per response; *0* form.

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Benzidine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Benzidine standard. The production of Benzidine in the United States is negligible and therefore, the agency is assuming *1* hour burden.

4-Aminobiphenyl

1218–0090

On Occasion.

Business or other for-profit; small business or organizations.

Respondents *0*; *1* total hour; *0* hours per response; *0* form.

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 4-Aminobiphenyl. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the 4-Aminobiphenyl standard. The production of 4-Aminobiphenyl in the United States is negligible and therefore, the agency is assuming *1* hour burden.

Signed at Washington, DC this 14th day of June, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90–14173 Filed 6–18–90; 8:45 am]

BILLING CODE 4510–26–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. upon receipt of these these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the film involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1990.

The petitions filed in this case are avaiable for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 4th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Advance Transformer Co. (Workers)	Chicago, IL	6/04/90	5/21/90	24,465	Parts for fluorescent lights.
Baker Material Handling Corp. (IAE)	Cleveland, OH	6/04/90	2/13/90	24,466	Fork-Lift trucks.
Birnbaum & Englard Knitting Mills (ILGWU)	Brooklyn, NY	6/04/90	5/25/90	24,467	Sweaters.
Bomag (USA) Inc. (UAW)	Springfield, OH	6/04/90	5/22/90	24,468	Road rollers.
Brudi Equipment (IAM&AW)	Kelso, WA	6/04/90	5/23/90	24,469	Truck handling equipment.
Chrysler Corp. (Workers)	Syracuse, NY	6/04/90	5/21/90	24,470	Transmissions & transaxles.
Grand Production Co. (Workers)	Oklahoma City, OK	6/04/90	5/16/90	24,471	Oil & gas.
Jantzen, Inc. (Company)	Eunice, LA	6/04/90	5/22/90	24,472	Mens' & misses sportswear.
(The) Jaunty Textile (Workers)	Scranton, PA	6/04/90	5/23/90	24,473	Lingerie fabrics.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
K&F Industries, Inc. (Workers)	Fort Washington, PA	6/04/90	5/01/90	24,474	Furniture parts.
Lehigh-Leopold (UBCJA)	Burlington, IA	6/04/90	5/18/90	24,475	Furniture.
Liberty Circle F (IBEW)	Trenton, NJ	6/04/90	5/22/90	24,476	Wiring devices.
Lord Jeff Knitting (Company)	Norwood, NJ	6/04/90	5/22/90	24,477	Sweaters.
M&M Prewash Corp. (Workers)	El Paso, TX	6/04/90	5/09/90	24,478	Laundry service.
Micromatic Textron (UAW)	Holland, MI	6/04/90	5/25/90	24,479	Machine tools.
National Pattern, Inc. (SPMA)	Saginaw, MI	6/04/90	5/22/90	24,480	Tool patterns.
Otis Elevator (IUE)	Bloomington, IN	6/04/90	5/20/90	24,481	Elevator & escalator components.
Patterson Lake Products (Workers)	Pickney, MI	6/04/90	5/18/90	24,482	Auto parts.
Proknit Corp. (Workers)	Hazleton, PA	6/04/90	1/11/90	24,483	Pants & shirts.
Ronson Metals Corp. (IAMAW)	Newark, NJ	6/04/90	5/17/90	24,484	Flints.
Schlegel Indiana, Inc. (Workers)	Bloomington, IN	6/04/90	5/17/90	24,485	Seals for doors & windows.
Sprague Electric Co. (Workers)	Concord, NH	6/04/90	5/18/90	24,486	Semi conductors.
Top Stitches Sport Inc. (Company)	San Fernando, CA	6/04/90	5/15/90	24,487	Ladies' tops.
Uranerz U.S.A., Inc. (Company)	Casper, WY	6/04/90	5/23/90	24,488	Uranium.
WI Forest Products (IWA)	Coeur D'Alene, OH	6/04/90	5/25/90	24,489	Lumber.

[FR Doc. 90-14174 Filed 6-18-90; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-17, 139]

American Standard, Inc., Union Switch & Signal Division Swissvale, PA; Negative Determination on Reconsideration

Pursuant to a U.S. Court of International Trade order in *United Electrical Workers* v. *Brock* (USCIT 86-11-01409) (February 27, 1990) the Department is issuing a negative determination on reconsideratin based on new findings including a court ordered hearing which supports the Department's previous notice of revised determinations for workers at Swissvale.

In the above decision the court upheld the Department's finding regarding Korean relay frames; however, the court also found that the Secretary's determination was not supported by substantial evidence in regards to the importation of Italian train stop kits. The court also ordered further investigations on the importation of Canadian office control panels.

Based upon a review of the record, demeanor, manner, knowledge and expertise of the senior company officials who testified at the May 23, 1990 hearing, I view the statements by the company officials as credible. Further, the bias and other charges alleged by the union at the company cannot be substantiated.

During the investigation, the company officials were focusing on the big picture—$137 million a year business. Panel imports were infinitesimal (less than one-half of one percent) at $300,000. The company officials did not recognize the relevancy of the component imports until they started investigating the purchase orders. Neither the company nor the company officials have a financial interest in the workers not receiving benefits since the trade adjustment assistance (TAA) benefits are federally funded.

With respect to imported office control panels which were essentially shells with light boxes, the Department found earlier that workers in Departments 110, 222 and 390, fabrication, system wiring and planting, respectively, were adversely impacted by such imports. These departments were certified because they were more directly impacted than the other departments. This is based on the process sheet and testimony. There was not sufficient evidence to certify the rest of the Swissvale workers. All other production departments were only marginally affected or were not affected by panel imports. Further, if the imported panels were imported complete and needed little additional work, like plaintiffs allege, they accounted for less than one-half of one precent of total sales in 1984 and 1985.

The impact of imported panels on employment in the Quality Assurance Departments (541, 544 and 545) was little, if any, according to the employment records in the administrative record. The major employment cutback occurred in mid-1984, a period prior to any possible certification based on a petition dated January 17, 1986. Further, in 1985 there was little monthly change in employment in the Quality Assurance Departments. It was not until May 1986 when Departments 541 and 544 significantly declined in employment. This is the period when the Department's collection of data was complete and the domestic outsourcing was proceeding in earnest. Department 545 continued with two workers from January 1985 through December 1986.

Further, after the review of the oral testimony and in consideration of the demeanor, manner, knowledge and expertise of Mr. John Poremba, I am persuaded that significant additional work had to be performed on the imported panels. Mr. Poremba testified that there were no worker separations because of the imported Canadian panels, since the workers were transferred to other departments.

Since the subsequent affidavit by Mr. Pormeba does not explicitly or directly contradict his earlier affidavit and oral testimony, I accept Mr. Poremba's earlier affidavit and oral testimony as persuasive.

Based upon the investigation findings, there is no basis for the certification of workers at Swissivale who produced train stop kits. Senior company officials who demonstrated knowledge of the contract and product, testified at the court ordered hearing that the type of train stop kits imported from Italy for the Port Authority of Allegheny County (Pittsburgh Transit Contract) was not the type that was produced in Swissvale. This was confirmed by John Poremba in his affidavit.

Train stop kits were only a very small part of any given system. The Italian train stop kits accounted for less than 5 percent of the Pittsburgh Transit Contract and less than one percent of total sales in 1984 when the purchase orders were amended to reflect a price increase after being issued in October 1983.

Further, the train stops produced at Swissvale were of the "continuous" technology while those imported used an intermittent system. Senior company officials testified that the specs called for an intermittent system of train stop kits. Also, to develop the one time order

for an intermittent type of train stop system at Swissvale would have taken between 18 and 24 months and, given the time-frame of the contract, that would have been impossible. US&S's only produced the continuous system of train stop kits. Finally, by using the Italian train stop kits, Union Switch was able to obtain the Pittsburgh Transit Contract which created more production and continued employment for Swissvale.

Midtex relays were first brought up in this investigation on May 23, 1990 in petitioner's additional affidavits and in other prepared questions for the company officials. This is the first time the matter surfaced and there is not adequate data in the case file for the Department to determine whether midtex relays were imported and, if they were, whether increased imports of midtex relays contributed importantly to declines in sales, production or employment on the LP–100 relays produced at Swissvale, during the relevant time period. Further, given the court order of February 27, 1990, the Department has no authority for further investigation. According to Mr. Poremba the substitution of the midtex relays for other relays occurred over a period of 10 years from through 1985.

Investigation findings show that the need for the restructuring of the Swissvale plant came from an inefficient Swissvale plant, the need for a more favorable labor climate, and from flat domestic and export markets, resulting, in part, from lower federal spending for transit programs. The Swissvale shutdown was the result of outscourcing to domestic vendors and the transfer of assembly and test to domestic corporate facilities in Georgia and South Carolina and the establishment of a new product service and distribution center in Georgia. Throughout the history of this investigation, it has become readily apparent that worker separations were more the result of declining export sales and the transfer of production to domestic vendors and domestic corporate facilities rather than increased imports of components. Neither declines in the export market nor a domestic transfer of production would provide a basis for a worker group certification.

The Department in certifying the three departments at Swissvale on evidence of the company's very limited imports of components covered the workers it could under the law. However, the Department is persuaded that there is no substantial evidence to certify the rest of the workers at Swissvale.

Finally, all of the decline in production at Swissvale in 1985 was accounted for by declines in the export market. Declines in the export market would not provide a basis for certification.

Conclusion

After reconsideration, I affirm the orginal notice of revised notice of determination on remand to apply for adjustment assistance to former workers of American Standard, Inc., Union Switch & Signal Division, Swissvale, Pennsylvania.

Signed at Washington, DC., this 11th day of June 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, UIS.

[FR Doc. 90–14175 Filed 6–18–90; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–90–6–M]

Homestake Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.11002 (handrails and toeboards) to its Lead Mine (I.D. No. 39–00055) located in Lawrence County, South Dakota. 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 crossovers, elevated walkways, elevated ramps and stairways be of substantial construction, provided with handrails, and maintained in good condition. Where necessary, toeboards are to be provided.

2. The treatment plant contains approximately 1500 feet of aqueducts that extend alongside and between the rotating biological concentrators (RBC) and intersect cement walkways and a gravel driveway that provide access to the aqueducts and RBC's.

3. The aqueducts have aluminum gripstrut covers but are not regularly used as travelways nor designated as travelways for persons to go from one place to another.

4. As an alternate method to providing handrails along the aqueducts, petitioner proposes that when employees occasionally stand or walk on the covered, buried aqueducts, the following protection would be put in place:

(a) Signs would be posted stating "Elevated Covered Waterways—Caution—No one allowed on top without permission from the RBC technician"; and

(b) No person would be allowed on the waterway covers without permission from the RBC technician.

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 Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 19, 1990. Copies of the petition are available for inspection at that address.

Dated: June 12, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–14176 Filed 6–18–90; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–237]

Commonwealth Edison Co. Dresden Nuclear Power Station; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–19 issued to Commonwealth Edison Company (the licensee or CECo), for operation of the Dresden Nuclear Power Station, Unit 2, located in Grundy County, Illinois.

Identification of Proposed Action

The amendment would consist of a conversion of the Provisional Operating License (POL) No. DPR–19 to a Full-Term Operating License (FTOL) with an expiration date for the FTOL to be 40 years from the date of issuance of the construction permit which would be January 10, 2006.

The amendment to the license is in response to the licensee's application dated March 16, 1973 for the conversion. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Regulation Relating to the Conversion of the Provisional Operating License to a

Full-Term Operating License," Commonwealth Edison Company, Dresden Nuclear Power Station, Unit 2, Docket No. 50–237 dated June 7, 1990.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impact of the proposed conversion of the POL to an FTOL for Dresden Nuclear Power Station, Unit 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Relating to Operation of Dresden Nuclear Power Station, Units 2 and 3," dated November 1973, and more recent NRC policy.

Radiological Impacts

The staff concludes that the exclusion area, the low population zone and the nearest population center distances will likely be unchanged from those described in the November 1973 Final Environmental Statement. Dresden Station is located in a relatively low populated area. The low population zone (LPZ) is approximately the area enclosed by an 8000 meter (5-mile) radius from the plant. The population in the area surrounding the site has grown at a somewhat faster rate than projected in the FES for the year 1990 (10,415 compared to 8,048 projected). Current projections of population within the 50-mile radius of the station are lower than the projection in the FES. The FES population projection within the 50-mile radius for 1980 was 8,070,978 which is 28 percent greater than the 1980 census figures for the area which total 6,301,641. The FES population within the 50-mile radius for the year 2000 was 12,900,000. The current population prediction (based on projections from the Northeast Illinois Planning Commission, State of Illinois Bureau of the Budget, and Northeast Indiana Planning Commission) to the year 2010 is 7,366,584 which is less than the FES 50-mile projections for both 1980 and 2000. This small increase in the number of people living within the 5-mile zone, the lower than projected population increase within the 50-mile radius and the continuing rural nature of the area indicate that the number of people living around and within the vicinity of the plant should pose no problem to the issuance of a FTOL and the proposed extension of the operating license.

The issuance of the FTOL for 40 years from issuance of the construction permit would not significantly affect the probability or consequences of any reactor accident. Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding as-low-as-is-reasonably-achievable (ALARA) limits, and are indicative of future releases. The proposed license would not increase the annual public risk from reactor operation.

With regard to normal plant operation, the occupational exposures for the Dresden Nuclear Station have closely followed the national average for boiling water reactors. The licensee is striving for dose reductions in accordance with ALARA principles and the staff expects further reductions to be achieved using advanced technologies and equipment that will likely be available.

Accordingly, annual radiological impacts on man, both offsite and onsite, are not more severe than previously estimated in the FES, and our previous cost-benefit conclusions remain valid.

With regard to normal plant operation, the license complies with the NRC guidance and requirements for keeping radiation exposures "as low as is reasonable achievable" (ALARA) for occupational exposures and for radioactivity in effluents. Technical Specifications are in place to ensure continued compliance with these requirements.

The staff also assessed the radiological impacts from potential severe accidents, the radiological aspects related to site features and the effects of external hazards. The staff did not calculate the risks of severe accidents at Dresden Unit 2. However, the risk from severe accidents at a plant with some design features in common and from a plant nearby have been calculated and may be taken as indications of the general magnitude of risk that exists at Dresden and that these risks are within an acceptable level.

Non-Radiological Impacts

The staff re-evaluated the non-radiological aspects of operation of the plant and transmission facilities. The effects of cooling system operation, fish impingement, ichthyoplankton entrainment, thermal discharge effects, chemical discharge effects, endangered and threatened species, land use, terrestrial ecology, transmission lines and floodplain management were evaluated. Effluent limitations and water quality monitoring at power plants are imposed by the EPA through the National Pollutant Discharge Elimination System (NPDES) Permit issued for each facility. An NPDES Permit for Dresden Units 2 and 3 was issued by the State of Illinois and the staff's discussions on the environmental assessment include the findings made by the State in its impact review. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated March 16, 1973, (2) the Final Environmental Statement relating to operation of the Dresden Nuclear Power Station, issued November 1973, and (3) the Environmental Assessment dated June 7, 1990. These documents are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC 20555 and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 7th day of June, 1990.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14153 Filed 6–18–90; 8:45 am]

BILLING CODE 7590–01–M

Ten-Year License Term for Major Operating Fuel Cycle Licensees

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: That the license term for major operating fuel cycle licensees be extended from the current five-year period to a ten-year period.

SUMMARY: Notice is hereby given that the license term for major operating fuel cycle licensees (i.e., licensees authorized to possess and use special nuclear material for reactor and fuel fabrication and/or recovery, pursuant to 10 CFR part 70, and licensees authorized to possess and use source material for production of uranium hexafluoride pursuant to 10 CFR part 40) will be increased from the current five-year period to a ten-year period on the next renewal of the affected license. The five-year term has been a matter of policy and practice (see 32 FR 7172, May 12, 1967); it is not in the codified regulations. In the past ten years, operations by major fuel cycle licensees have become stable, with few significant changes to their licenses and their

operations. As part of NRC's overall program to make licensing more efficient and effective, NRC has concluded that the term for major operating fuel cycle licenses can be increased from five years to ten years with no adverse effect on public health, safety, or the environment. The change should have a positive effect on safety, because it will allow agency resources to be shifted to enhance oversight of these facilities through increased plant operational assessments, periodic safety demonstration reviews, and increased interactions with licensees through management meetings and periodic workshops.

In order to ensure that NRC has a more timely update of the safety demonstration section than the ten-year period for license renewal, the NRC has obtained OMB clearance to require an update every two years. Currently, the safety demonstration sections of the licenses of major fuel cycle facilities are updated every five years during license renewal.

FOR FURTHER INFORMATION CONTACT: Charles J. Haughney, Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, telephone (301) 492–3328.

Dated at Rockville, Maryland, this 11th day of June, 1990.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 90–14154 Filed 6–18–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–12319, License No. 35–17178–01, EA No. 89–223]

In the Matter of Tulsa Gamma Ray, Inc., Tulsa, OK; Order Imposing Civil Monetary Penalty

I

Tulsa Gamma Ray, Inc. (licensee) is the holder of NRC Materials License No. 35–17178–01 issued by the Nuclear Regulatory Commission (NRC/Commission) on January 26, 1977. The license authorizes the licensee to possess sealed radioactive sources for use in various exposure devices in the conduct of industrial radiography and to possess sealed sources for use in calibrating radiation survey instruments. The license was scheduled to expire on March 31, 1987, but remains valid while a renewal application is being processed by NRC.

II

An inspection of the licensee's activities was conducted October 2–4, 1989. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and proposed Imposition of Civil Penalty was served upon the licensee by letter dated December 29, 1989. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated February 22, 1990.

III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support has determined as set forth in the Appendix to this Order that 9 of the 10 violations occurred as stated, that 1 violation should be withdrawn, and that the $7,500 penalty proposed for the violations in the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced by $750 to $6,750.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:* The licensee pay a civil penalty in the amount of $6,750 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations admitted by the licensee, consisting of the violations set forth in the Notice of Violation as modified by the withdrawal of Violation 3, this Order should be sustained.

Dated at Rockville, Maryland, this 6th day of June 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Evaluations and Conclusions—Appendix to Order Imposing Civil Monetary Penalty

On December 29, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violations identified during an October 2–4, 1989, routine, unannounced inspection of Tulsa Gamma Ray, Inc., of Tulsa, Oklahoma. Tulsa Gamma Ray (the "licensee") responded to the Notice of Violation on February 22, 1990. The licensee admitted 9 of the 10 violations but requested reconsideration of the civil penalty for a variety of reasons. The NRC's evaluations and conclusions regarding the licensee's arguments follow:

Restatement of Violations

1. Conduct of Licensed Activities at Temporary Jobsites

a. 10 CFR 34.43(b) requires that a survey with a calibrated and operable radiation survey instrument be made after each radiography exposure to determine that the sealed source has been returned to its shielded position. If the radiographic exposure device has a source guide tube, the survey must include the guide tube.

Contrary to the above, on October 2, 1989, a licensee radiographer failed to conduct a survey of the exposure device and source guide tube after any of four exposures observed by an NRC inspector.

b. 10 CFR 34.42 requires that areas in which radiography is being performed shall be conspicuous posted as required by 10 CFR 20.203(b) and (c)(1). Section 20.203(c)(1) requires that each high radiation area shall be conspicuously posted with a sign bearing the radiation caution symbol and the words: "CAUTION HIGH RADIATION AREA." As defined in 10 CFR 20.202(b)(3), "high radiation area" means any area, accessible to personnel, in which there exists radiation originating in whole or in part within licensed material at such levels that a major portion of the body could receive in any 1 hour a dose in excess of 100 millirem.

Contrary to the above, on October 2, 1989, the licensee's representatives failed, while conducting radiography, to post a high radiation area with a sign bearing the radiation caution symbol and the words: "CAUTION HIGH RADIATION AREA."

2. Radiation Exposure Evaluations, Records and Reports

a. 10 CFR 20.201(b) requires that each licensee make or cause to be made such surveys as (1) may be necessary for the licensee to comply with the regulations in 10 CFR part 20, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions. 10 CFR 20.101(a) generally limits the permissible occupational exposure to the whole body to 1¼ rems per calendar quarter.

Contrary to the above, the radiation exposure records for six radiographers, covering the period from May 1989 through July 1989, indicated that personal monitoring devices had been damaged and could not be analyzed; and, as of October 2, 1989, the licensee had not performed evaluations to determine the radiation exposure received by these six individuals.

b. 10 CFR 20.102(a) specifies that each licensee shall require any individual, prior to first entry into the licensee's restricted area during each employment or work assignment under such circumstances that the individual will receive or is likely to receive in any period of one calendar quarter an occupational dose in excess of 25 percent of the applicable standards specified in § 20.101(a) and § 20.104(a), to disclose in a written, signed statement, either: (1) That the individual had no prior occupational dose during the current calendar quarter, or (2) the nature and amount of any occupational dose which the individual may have received during that specifically identified current calendar quarter from sources of radiation possessed or controlled by other persons.

Contrary to the above, as of October 2, 1989, the licensee had failed to obtain the required information concerning the current quarterly occupational dose received by two radiographers prior to assigning them work in restricted areas.

This is a repeat violation.

c. 10 CFR 20.102(b) requires that before a licensee permits, pursuant to § 20.101(b), any individual in a restricted area to receive an occupational radiation dose in excess of the standards specified in § 20.101(a), the licensee shall obtain a certificate on Form NRC–4, or on a clear and legible record containing all the information required in that form, signed by the individual showing each period of time after the individual attained the age of 18 in which the individual received an occupational dose of radiation, and perform the dose calculations required by 10 CFR 20.102(b)(2).

Contrary to the above, the licensee allowed an individual to receive an occupational radiation dose in excess of the standards specified in 10 CFR 20.101(a), without having Form NRC–4 or other authorized record signed by the individual to certify the completeness of the record of accumulated dose. (The licensee had otherwise completed the form, and the inspector verified that the individuals' accumulated dose was not in excess of regulatory standards.)

This is a repeat violation.

3. Inventory Control

10 CFR 34.26 requires that each licensee conduct quarterly physical inventories to account for all sealed sources received and possessed under the license.

Contrary to the above, although the licensee had conducted quarterly physical inventories, such inventories failed to include iridium-192 sealed sources removed from radiography exposure devices and placed into source changers for storage. These sealed sources were still in the licensee's possession when the quarterly inventory was conducted. For example, the licensee did not account for two iridium-192 sealed sources, Serial Nos. 3031 and 3066, during quarterly inventories conducted on June 30, 1989 and September 30, 1989, respectively.

4. Transportation of Licensed Material

10 CFR 71.5(a) requires that each licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR parts 170–189.

a. 49 CFR 172.403 requires that each package of radioactive material labeled as "RADIOACTIVE YELLOW II" include the following information entered on the label: (1) The name of the radionuclide, (2) the content activity expressed in appropriate curie units, and (3) the transport index of the package.

Contrary to the above, on October 2, 1989, the licensee's representatives transported two exposure devices containing iridium-192 sealed sources in packages that had "RADIOACTIVE YELLOW II" labels without having the required information on the labels.

b. 49 CFR 177.842(d) requires that radioactive material packages be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on October 2, 1989, the licensee's representatives transported Amersham Model 683 exposure devices, containing iridium-192 sealed sources, in the required overpack without having blocked or braced the package within the vehicle's darkroom where it is routinely placed for transport.

c. 49 CFR 172.200 requires that each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by subpart C of 49 CFR Part 172. Subpart C, § 172.203(d) describes the required entries for radioactive material, including the transport index assigned to each package bearing RADIOACTIVE YELLOW—II or RADIOACTIVE YELLOW—III labels and, for a package approved by the U.S. Nuclear Regulatory Commission (USNRC), a notation of the package identification marking.

Contrary to the above:

(1) On October 2, 1989, the licensee's representative carried shipping papers incorrectly showing a transport index (T.I.) of 1.8 for a package bearing a RADIOACTIVE YELLOW II label that the NRC inspector determined to have a T.I. of 0.5.

(2) On October 2, 1989, the licensee's representative carried shipping papers with package identification descriptions that did not correspond with the markings on the package, and the package was approved by the USNRC. Further, the package descriptions on the licensee's standard shipping papers did not correspond with any packages possessed by the licensee.

d. 49 CFR 172.502(a) states, with exceptions not applicable here, that no person may affix or display on a transport vehicle any placard unless the placard represents a hazard of the material being transported.

49 CFR 172.504 prescribes the requirements for placarding vehicles used to transport hazardous materials. Specifically, Table 1 specifies that the "RADIOACTIVE" vehicle placard applies only to transport vehicles containing packages of radioactive material bearing the "RADIOACTIVE YELLOW III" label.

Contrary to the above, on October 2, 1989, the licensee's representative transported a package appropriately categorized and labeled as "RADIOACTIVE YELLOW II" in a vehicle bearing a "RADIOACTIVE" placard. No packages labeled as "RADIOACTIVE YELLOW III" were present in the vehicle.

These violations have been categorized in the aggregate as a Severity Level III problem. (Supplements IV, V, and VI)

Cumulative Civil Penalty—$7,500 (assessed equally among the 10 violations)

Summary of Licensee's Response to Notice of Violation

The licensee admitted 9 of the 10 violations, denied 1 violation (Violation 3) and discussed its view of the significance of 3 of the violations (Violations 1.a, 1.b. and 4.b.).

1. In response to Violation 1.a., the licensee admits the surveys were not conducted, but requests that NRC reevaluate the significance of the violation. The licensee contends that, although the radiographer was highly trained and outstanding in his training class, the presence of the NRC inspector created a stressful environment which was responsible for the violation having occurred.

The licensee also asserts that the radiographer misunderstood the inspector's question when the radiographer reportedly stated that he did not routinely conduct surveys of the exposure device and source guide tube if he experienced no difficulty in cranking out the source. According to the licensee, the radiographer understood that the question referred to perimeter surveys that were to be performed only four times per shift.

The licensee added that the subject radiographer was no longer employed by the licensee.

2. In response to Violation 1.b., the licensee admits this violation, but contends that the significance of the failure to post a high radiation area in this specific case is minimal

since no one had entered the restricted area, access to the area was limited, the duration of the exposure was brief, and the area was under constant surveillance.

3. In response to Violation 3, the licensee acknowledges that one of the sources, Serial No. 3031, had not been documented on a June 1989 inventory, but asserted that it had determined that the source was located at the Panama City, Florida, office at the time of the inventory and should not have appeared on the inventory list. The licensee also provided records documenting the return and receipt of the second source, Serial No. 3066, by the manufacturer prior to September 30, 1989.

4. In response to Violation 4.b., the licensee admits the violation, but argues that it considered the failure to brace or block such packages acceptable to NRC, since it had observed that common carriers did not comply with this requirement. The licensee also contends that the method it previously used to transport the exposure device within a steel box bolted to the vehicle provided greater protection than use of the required overpack, and adds that although it was issued a violation in 1988 for failing to use the overpack, there was no mention of blocking and bracing requirements.

NRC Evaluation of Licensee's Response to Notice of Violation

1. In regard to Violation 1.a., the NRC staff does not dispute the licensee's contention that its workers were fully and properly trained to conduct the subject surveys. However, the fact remains that the NRC inspector observed the radiographer fail to conduct the surveys. Because major radiation exposures can result from failure to conduct this type of survey, the NRC expects radiographers to perform the required survey in every instance. The fact that an NRC inspector was present has no bearing on whether this violation occurred and does not, in NRC's view, alter its significance.

The licensee's statement that the radiographer misunderstood the inspector's question does not change NRC's original assessment of the violation. The violation is based primarily on what the inspector observed and not on what the radiographer stated to the inspector. Similarly, the statement that the radiographer is no longer employed by the licensee does not alter the fact that the violation occurred.

The NRC staff concludes that the violation occurred as stated and that the explanation offered by the licensee does not merit reconsideration of the significance of the violation.

2. In regard to Violation 1.b., the NRC staff notes that the licensee committed in the license application to post the "CAUTION HIGH RADIATION AREA" signs required by 10 CFR 20.203(c)(1) for every radiography job. The licensee's operating procedures require such postings.

As stated in the licensee's response, ropes and radiation area signs were posted at three stairway access points to the rooftop where radiography was being conducted. However, access to the roof top or the building itself was not otherwise restricted, the licensee's signs were not immediately visible from the ground, and a plant QC inspector had confirmed that employees were working in the area.

Although NRC acknowledges that no incident occurred on this date, the plant QC inspector did indicate that, on more than one occasion, a plant employee had crossed a radiation area barrier at this plant. The design of this plant (a refinery), prevents full visual surveillance because of visual obstruction by various structures in the area. Although two licensee employees were available, they were positioned side by side on the roof, thus there was no surveillance of the area opposite structures located on the roof.

The NRC staff believes that adequate posting is important to ensure that individuals approaching the area are alerted to potential radiation fields.

NRC concludes that the violation occurred as stated, and the explanation provided by the licensee does not merit reconsideration of the significance of the violation.

3. In regard to Violation 3, the NRC staff has reviewed the documents submitted with the licensee's response, which were not available at the time of the inspection. Although the assistant RSO had stated that Source No. 3066 was still located at the licensee's facility on the date of the inspection, the licensee has provided verification from the manufacturer that the source had been received at its facility on September 19, 1989. The NRC accepts the licensee's explanation concerning the second sealed source that had been previously transferred to the licensee's facility in Florida.

The NRC staff concludes that neither of the sources in question was in the possession of the licensee at the times the inventories were performed and that this violation should be withdrawn.

4. In regard to Violation 4.b., NRC notes that the use of the overpack designed for use in transporting the radiography device is required by NRC and DOT regulations (10 CFR 71.5 and 49 CFR 173.471(a)). The use of the overpack, however, does not satisfy the separate regulatory requirement that packages be blocked and braced (10 CFR 71.5 and 49 CFR 177.842(d)). Both requirements are applicable. This violation is of increased significance because of the licensee's failure to secure the door at the rear of the vehicle. The inspector observed the door fly open several times during transport of the unsecured overpack containing the source.

NRC concludes that this violation occurred as stated and that the information provided by the licensee does not merit reconsideration of the significance of the violation.

Summary of Licensee's Request for Mitigation

The licensee makes the following points in requesting full mitigation of the proposed civil penalty:

1. The licensee contends that the violations cited would normally be classified at Severity Level IV or V and do not warrant a civil penalty. Of the 10 violations cited, the licensee contends that only 3 could be considered significant, while the remainder were recordkeeping errors or minor oversights.

2. The licensee offers mitigating circumstances for the three more severe violations which it believes should be considered toward the end of full mitigation (the licensee's arguments in regard to this matter are addressed above).

3. The licensee claims that it has taken extensive corrective actions, including reassignment or removal of the two individuals whom it believes were responsible for the majority of the violations. The licensee also states that a replacement Assistant Radiation Safety Officer has been named.

4. The licensee asserts that NRC Information Notice (IN) 87–47 regarding blocking and bracing was reviewed upon receipt and that prior to instituting the use of the overpack, the licensee's previous manner of securing exposure devices in the licensee's transport boxes did satisfy the requirement for blocking and bracing. The licensee further asserts that it did not receive IN 88–10, "Materials Licensees: Lack of Management Controls over Licensed Programs."

NRC Evaluation of Licensee's Request for Mitigation

1. Although individually these violations may not warrant a civil penalty, NRC believes that collectively they represent a breakdown in control of licensed activities which has been properly classified at Severity Level III in accordance with the Enforcement Policy. While some of the violations represented documentation problems, the number of violations in specific program areas is indicative of inadequate management oversight of licensed activities. NRC views the cumulative effect of these failures and the potential consequences to be more significiant than the individual violations.

2. NRC does not believe that the licensee's explanations for the failures to conduct a radiation survey or to post a high-radiation area warrant mitigation. The failure to strictly adhere to radiation safety requirements cannot be overlooked. Strict adherence to these requirements must be observed regardless of circumstances.

NRC also does not believe that the licensee's statements regarding package blocking and bracing warrant mitigation. NRC believes this violation to have been significant in that on one occasion, the liecensee's employees were observed transporting material without having braced the package or secured the door to the compartment where the package had been placed. Additionally, the licensee states that it was aware of the requirement to secure a package during transport.

3. NRC acknowledges the licensee's corrective actions regarding the violations noted during the inspection, including additional training and the reassignment of personnel. In fact, 25 percent mitigation of the base civil penalty was applied to the original penalty in recognition of the corrective action taken. However, at the time of the enforcement conference, the licensee's corrective actions did not address NRC's concerns regarding lack of sufficient management oversight to assure compliance

with regulatory requirements. Therefore, in accordance with the Enforcement Policy, additional mitigation of the civil penalty based on corrective action is not appropriate.

4. With regard to the licensee's statements concerning past performance and prior notice, the licensee does acknowledge receipt of information Notice 87–47, which described the requirement to block and brace radiography devices, as well as the separate requirement to use a protective overpack, during transport. In addition, while NRC accepts the licensee's statement that it has no record of receiving Information Notice 88–10, "Materials Licensees: Lack of Management Controls over Licensed Programs," in a previous letter to the licensee dated January 10, 1989, NRC did express concern about the implementation of the licensee's program in the area of management control. Therefore, the licensee did have specific prior notice concerning this problem. Mitigation is not considered appropriate because the licensee should have taken steps following NRC's 1986 inspection, during which seven violations were discovered, to improve oversight of its NRC-licensed programs.

NRC Conclusion

Based on NRC's evaluation of the licensee's response, the NRC staff concludes that 9 of the 10 violations occurred as stated, that one violation should be withdrawn and that Tulsa Gamma Ray has provided no information that would cause NRC to alter its view that the problem is a significant regulatory concern. NRC concludes that it has applied its Enforcement Policy correctly in determining that a monetary civil penalty is appropriate. Based on NRC's review of the lisencee's arguments regarding the appropriateness of escalating the base civil penalty for prior notice and past performance, NRC concludes that such escalation is appropriate. Applying a 10 percent reduction due to the withdrawal of one violation results in an adjusted civil penalty of $6,750. Accordingly, the NRC staff concludes that a civil penalty of $6,750 should be imposed by order.

[FR Doc. 90–14155 Filed 6–18–90; 8:45 am]
BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1990, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1990, 31.4 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirment Tax Act shall be credited to the Railroad Retirement Account and 68.6 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: June 12, 1990.
By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90–14133 Filed 6–18–90; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28105; File No. SR–BSE–90–06]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to an Amendment to the BSE Constitution Changing the Composition of Its Nominating Committee

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 May 25, 1990, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") 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 solict 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 Exchange has filed a proposed amendment to Article VIII of its Constitution which would change the composition of its Nominating Committee to provide for a greater diversity of representation among member firms, to add representation from the public sector, and to provide for the appointment annually by the Vice Chairman of the Exchange of a Board representative to serve a one-year term.

The BSE Constituition provides that its Nominating Committee shall be composed of seven persons. As amended, the Constitution would provide that six of the committee members be elected by ballot to serve a two year term. The Constitution also would provide that one committee member—the Board representative—may be appointed by the Vice Chairman of the Board of Governors to serve a one year term. The Board representative would be selected from the existing members of the Board of Governors. Amended Article VIII would require that five of the seven committee members represent broker-dealer member organizations and two committee members represent the public. The Constitution would also provide that at least two, but not more than three, members of the committee shall be floor members, and at least one of these must be a specialist.

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

The purpose of the proposed amendment is to revise the composition of the Nominating Committee to provide for a greater diversity of representation among the different categories of member firms, to add representation from the public sector, and to provide for the appointment annually by the Vice-Chairman of the Exchange of a Board representative to serve a one-year term. The designated Board member will be in a position to advise the committee of the strategic plans of the Exchange and the desired skills in prospective Board members most likely to assist in attaining the goals of the Exchange.

The statutory basis for the proposed rule change is section 6(b)(3) which provides that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed amendment imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed amendment was approved by the Board of Governors on April 24, 1990. The Exchange notified its membership of the proposal and received no comments on the proposed amendment to the Constitution.[1]

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 persons, other than those that may be withheld from the public in accordance with the provision 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 the BSE. All submissions should refer to File No. SR-BSE-90-06 and should be submitted by July 10, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 12, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14079 Filed 6-18-90; 8:45 am]

BILLING CODE 8010-01-M

[1] Article XXIV, Section 1 of the BSE Constitution provides that any amendment to the Constitution which is adopted by the Board of Governors shall be submitted to Exchange members. If the amendment is not protested by fifteen Exchange members prior to the expiration of the seventh business day after the date of delivery or mailing of the proposed amendment, then the amendment is deemed approved.

[Rel. No. 34-28112; File No. SR-PSE-90-24]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change Relating to Alternate Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder, [2] notice is hereby given that on May 29, 1990, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The PSE has requested accelerated approval of the proposal.[3] 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 PSE proposes to renew, for an additional six-month period, its current pilot program governing the activities of alternate specialists on its two equity trading floors in order to allow the Exchange additional time to evaluate the effectiveness of the policies, and to amend rule II, section 10(d), commentary .02, to exempt the alternate specialist from clearing both posts when he or she has been requested by the primary specialist to participate in a transaction. The text of the policies were attached to the rule filing as Exhibit A and are available at the PSE and the Commission at the address noted in item III below.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] *See* letter from Kenneth J. Marcus, Equity Compliance, PSE, to Elizabeth Pucciarelli, Division of Market Regulation, dated May 30, 1990, requesting accelerated approval of File No. SR-PSE-90-24 so that the pilot program would not be allowed to expire.

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 III 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

In file number SR-PSE-89-25, submitted to the Commission in September, 1989, the PSE proposed the adoption, on a six-month pilot basis, of several policy statements concerning the operation of the Exchange's alternate specialist system. These proposals were approved by the Commission [4] and were incorporated as commentaries into PSE rule II, section 10(d).[5] The Exchange now seeks Commission approval to renew the pilot program for an additional six months in order to allow the Exchange the opportunity to continue its evaluation of the effectiveness of these proposals.

The PSE is also proposing an amendment to Commentary .02 which would exempt the alternate specialist from clearing both posts when a primary specialist has requested the alternate specialist's participation in the transaction.[6] The Exchange states that

[4] *See* Securities Exchange Act Release No. 27493 (December 1, 1989), 54 FR 50833 (December 11, 1989) (order approving File No. SR-PSE-89-25). The original six month pilot expired June 1, 1990.

[5] These policies, which were added to PSE rule II, section 10(d) as commentaries .02 through .05, provide: (1) a clarification of the duty of alternate specialists to clear both primary specialist posts on each of the PSE's two equity trading floors prior to entering into a trade; (2) sanctions for alternate specialists if their specialist evaluation ranking falls in the bottom 10% of their trading floor; (3) a 500-share minimum requirement for alternate specialists participating in certain preopening orders when requested to do so by a specialist; and (4) that the names of the alternate specialist and designated stocks be displayed at each specialist post in alphabetical order.

[6] Commentary .02 currently requires an alternate specialist to clear both posts (*i.e.*, obtain market quotes from the applicable specialist on each trading floor) prior to effecting a transaction on the equity trading floors or on the Intermarket Trading System ("ITS"). The Exchange proposes to add the following language: "except when he has been called upon by a registered primary specialist to participate in a transaction."

the proposed amendment is consistent with PSE rule II, section 10(d), which allows for a primary specialist to "call upon those alternate specialists * * * to act," in maintaining and aiding the market and with the general coordination responsibilities of the PSE specialist, set forth in PSE rule II, section 4(b). The Exchange further states that since the proposed modification to commentary .02 deals with a situation where a primary specialist has requested the alternate specialist's participation, it would appear to be redundant to require the alternate specialist to clear both posts where one can logically presuppose that the primary specialist is aware of the contra-specialist's market before he or she requests the involvement of the alternate specialist in the order.

The statutory basis for the proposed rule change and policy amendments is section 6(b)(5) of the Act in that they will act to facilitate transactions in securities and will help to perfect the mechanisms for a free and open market in Exchange-listed securities, by furthering the effectiveness of the alternate specialist within the trading system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that its policy statements regarding the activities of alternate specialists will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

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. 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 persons, other than those that may be withheld from the public in accordance with the provision 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 the PSE. All submissions should refer to File No. SR-PSE-90-24 and should be submitted by July 10, 1990.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the PSE's proposal to renew its pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[7] The Commission notes that the renewal of the pilot furthers the protection of investors and the public interest because it allows the Exchange additional time to evaluate the effectiveness of the pilot program. During the renewed pilot period, the Commission expects the Exchange to develop criteria to evaluate the effects of its policy statements on the activities of alternate specialists and to determine, for example, whether implementation of these policy statements is increasing the performance and effectiveness of alternate specialists within the specialist system. In particular, the Commission expects the PSE to submit a report to the Commission by October 1, 1990 describing how the implementation of commentaries .02, .03, and .04 to rule II, section 10(d) has improved the effectivenes of the PSE's alternate specialist system. Specifically, the Commission requests that the PSE address the following issues, among other things, in its October 1, 1990 report to the Commission: Whether there have been any complaints or any disciplinary actions against alternate specialists for violating the policies in the pilot program; whether requiring alternate specialists to clear the posts on the Exchange's two trading floors has helped in ensuring that public customers obtain the best possible executions of their securities orders; whether any alternate specialists have been precluded from acting as alternate specialists on the Exchange based on their performance rankings; and whether implementation of a 500-share participation requirement for alternate specailists on certain pre-opening orders has added depth to the PSE market. In addition, the Commission expects the PSE to file a proposed rule change by October 1, 1990, requesting one of the following: (1) An extension of the pilot, if further time is needed for evaluation; (2) permanent approval of the alternate specialist system policy statements; or (3) termination of the pilot program.

The Commission finds that the Exchange's proposed amendment to commentary .02 of PSE rule II, section 10(d), which would exempt the alternate specialist from clearing both posts when a primary specialist has requested the alternate's participation in a transaction, is appropriate. In situations where the primary specialist requests the participation of an alternate specialist in a transaction, the primary specialist already knows the market. In that situation, the Commission believes it would be redundant to require the alternate specialist to obtain a market quote from the primary specialist.

The Commission finds good cause for approving the proposed renewal of the pilot and the proposed amendment to commentary .02 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission believes it is necessary to renew the pilot program's operation so as to afford both the Exchange and the Commission a further opportunity to evaluate the pilot's operation. In addition, the substance of the proposal was noticed in the **Federal Register** for the full statutory period and did not receive any comments.[8] The amendment to commentary .02 is a clarification of one of the alternate specialist system policies that was approved by the Commission in Securities Exchange Act Release No. 27493.[9] The Commission believes, therefore, that accelerated effectiveness of the proposal for an additional six-month term is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [10] that the proposed rule change is hereby approved for a six-month period ending on December 1, 1990.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[11]

Dated: June 13, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14160 Filed 6-18-90; 8:45 am]

BILLING CODE 8010-01-M

[7] 15 U.S.C. 78s (1982).

[8] *See* note 4, *supra.*

[9] *Id.*

[10] 15 U.S.C. § 78s(b)(2) (1982).

[11] 17 CFR § 200.30-3(a)(12) (1989).

[Rel. No. 34-28106; File No. SR-PSE-90-15]

Self-Regulatory Organization; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing of Index Warrants Based on Financial Times-Stock Exchange 100 Index

On April 4, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("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 which will allow the PSE to list warrants based on the Financial Times-Stock Exchange 100 Index ("Index" or "FT-SE 100").

The proposed rule change was published in Securities Exchange Act Release No. 27989 (May 4, 1990), 55 FR 19820. No comments were received on the proposed rule change.

The proposed rule change will allow the PSE to list index warrants based on the FT-SE 100, an internationally recognized, capitalization weighted stock index based on the prices of 100 of the most highly capitalized British stocks traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE"). [3] The Index is updated each minute from 9 a.m. to 5 p.m. (London time).[4]

The PSE submitted its proposal to trade FT-SE 100 warrants pursuant to the requirements of a Commission approval order ("Index Approval Order") that, among other things, permits the PSE to list index warrants based on established market indexes, both domestic and foreign.[5] The Commission previously has approved the listing of FT-SE 100 Index warrants on the American Stock Exchange ("Amex").[6]

The PSE represents that the FT-SE 100 warrant issues will conform to the PSE listing guidelines established for index warrants in the Index Approval Order. Specifically, PSE rule I, section 3(b) provides that: (1) Issuers of FT-SE 100 warrants must have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements specified in PSE listing requirements; (2) the term of the warrants must be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues must be 1,000,000 warrants together with a minimum of 400 public holders, and must have an aggregate market value of $4,000,000.

The FT-SE 100 Index warrants will be direct obligations of their issuer subject to cash settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a put option will receive payment in U.S. dollars to the extent that the FT-SE 100 has declined below a prestated cash-settlement value. Conversely, holders of a warrant structured as a call option will, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the FT-SE 100 has increased above the pre-stated cash-settlement value. If "out-of-the-money" at the time of expiration, the warrants will expire worthless.

Consistent with the guidelines set forth in the Index Approval Order, trading in FT-SE 100 warrants will be subject to safeguards designed to ensure investor protection: (i) The Exchange's options suitability standards will be applicable to recommendations regarding index warrants and (ii) a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP") will be required to approve and initial a discretionary order in index warrants on the day the order is entered. The Exchange also recommends that FT-SE 100 warrants be sold only to options-approved accounts. In addition, prior to the commencement of trading, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the FT-SE 100 warrants.

In the Index Approval Order, the Commission noted that, with respect to warrants based on foreign indexes, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the PSE has entered into a Memorandum of Understanding with the Securities Association ("TSA"), the self-regulatory organization responsible for regulating U.K. equity securities market.[7] The Memorandum of Understanding will allow the PSE to obtain trading data from U.K. regarding component securities of the FT-SE 100 Index.[8] The Exchange believes that this Memorandum is an appropriate and sufficient information sharing agreement for the purpose of accommodating FT-SE 100 warrant trading on the Exchange.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange, and, in particular, the requirements of section 6(b)(5).[9] Specifically, the Commission believes that index warrants, such as the FT-SE 100 warrants, are innovative financing techniques that can provide issuers with increased flexibility in financing capital. Index warrants such as the proposed FT-SE 100 warrants are designed to allow an issuer to offer debt at a lower rate than in a straight debt offering in

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1982).

[3] The Index is composed of stocks of companies from 29 different industry groups, no one of which dominates the Index, and the percentage weighing of the five largest issues, as of October 31, 1989, accounted for approximately 21.38% of the Index's value. The total capitalization of the Index, as of October 30, 1989, was $521.6 billion. In addition, over the period January 1989 through June 1989, the average daily trading volume of each component stock was above 100,000 shares. The Index is administered by the FT-SE 100 Index Steering Committee, a committee composed of representatives from various U.K. financial institutions. The Steering Committee is responsible for, among other things, establishing rules to determine, review, and modify the composition of the Index, as well as how the Index is calculated.

[4] The Index is calculated by taking the summation of the multiple of the market price for each stock in the Index times the number of shares of that stock outstanding. This sum total is then divided by another number, termed the "divisor," to produce the Index value. The market price for each constituent stock is calculated by taking the mid-point between the highest bid and lowest offer for each stock. The divisor of the Index is continuously adjusted to reflect changes in market capitalization. The Index is published daily in the Financial Times and is available real-time on Reuters, Telerate and other market information systems which disseminate information on a minute-by-minute basis. For additional information regarding the calculation and composition of the Index, see letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, Commodity Futures Trading Commission ("CFTC"), dated January 8, 1990 ("FT-SE 100 letter"), at 4-5.

[5] *See* Securities Exchange Act Release No. 28034 (May 22, 1990), 55 FR 22001 (order approving File No. SR-PSE-90-11).

[6] *See* Securities Exchange Act Release No. 27769 (March 6, 1990), 55 FR 9380 (order approving File No. SR-AMEX-90-3).

[7] TSA came into existence as a result of an agreement between the ISE and the International Securities Regulatory Organization ("ISRO"). Under the terms of the agreement, the ISE was established as a recognized investment exchange with rights and obligations analogous to the NASD, and ISRO was reorganized as the TSA. Currently, the TSA is the self-regulatory organization responsible for regulating the U.K. equity securities market. Although all ISE members must be members of the TSA, TSA also consists of members which may not be active on the ISE. Thus, the Memorandum of Understanding entered into between the PSE and TSA will allow the PSE to obtain trading data from more U.K. equity securities market participants, whose activity may affect the FT-SE 100 warrants, than would an agreement between the PSE and the ISE.

[8] *See supra* note 12.

[9] 15 U.S.C. 78f(b)(5) (1982).

return for assuming some foreign currency or market volatility risk. At the same time, the FT–SE 100 warrants will benefit U.S. investors by allowing them to obtain differential rates of return on a capital outlay if the FT–SE 100 moves in a favorable direction within a specified time period.[10]

The Commission also believes that the FT–SE 100 warrants are consistent with the guidelines set forth in the Index Approval Order. Because the FT–SE 100 is broad-based index of actively traded, well-capitilized stocks, the trading of cash-settled warrants on the FT–SE 100 on the PSE does not raise unique regulatory concerns.[11] The Commission notes that the PSE rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to the FT–SE 100 warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the PSE has addressed adequately potential public customer problems that could arise from the derivative nature of FT–SE 100 warrants. Moreover, the PSE plans to distribute a circular to its membership calling attention to the specific risks associated with warrants on the FT–SE 100 and, pursuant to the PSE listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue FT–SE 100 warrants.

In light of the fact that the FT–SE 100 is a foreign index, the Commission believes adequate surveillance sharing agreements between the PSE and the TSA is a necessary prerequisite to deter and detect potential manipulation or other improper or illegal trading involving the warrants. To address this concern, the PSE entered into a Memorandum of Understanding with the TSA on May 1, 1990, that is broad enough to include the sharing of market information related to the trading of FT–SE 100 warrants on the PSE.[12]

Accordingly, the Commission believes the Memorandum of Understanding between the Amex and TSA is adequate to provide an oversight framework regarding potential manipulation or other trading abuses between the markets with respect to the trading of FT–SE 100 warrants.

Finally, The Commission believes that trading in the FT–SE 100 warrants will not have an adverse impact on U.S. financial market. In fact, the Commission believes the FT–SE 100 warrants will benefit U.S. markets by providing U.S. issuers more flexibility in raising capital at potentially lower costs and allowing U.S. investors an opportunity to better hedge against stock market fluctuations in the United Kingdom.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PSE–90–15) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Dated: June 12, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14161 Filed 6–18–90; 8:45 am]

BILLING CODE 8010–01–M

[10] Of course, if the FT–SE 100 moves in the wrong direction or fails to move in the right direction, the warrants will expire worthless and the investors will have lost their entire investment.

[11] The Commission previously has examined the FT–SE 100 in the context of an application by the London International Financial Futures Exchange for certification that its futures contract meets CFTC requirements to permit the contract's offer and sale of U.S. citizens. At that time, the Commission found that the FT–SE 100 was not readily susceptible to manipulation because of the representative nature of the various industry segments included in the Index, the weighted value of the Index's component stocks, and the substantial capitalization and trading volume of the component stoccks. *See* FT–SE 100 letter, *supra* note 4, at 5–7.

[12] *See* Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement between the PSE and the TSA dated May 1, 1990. The Memorandum of Understanding relates to the provision of information concerning any security traded through the facilities of the PSE, any security underlying a derivative instrument traded through the facilities of the PSE, or any derivative instrument based upon or including a security traded through the facilities of the PSE. Accordingly, the Memorandum allows for the provision of information relating to the FT–SE 100 warrants or any securities underlying the FT–SE 100 warrants.

[13] 15 U.S.C. 78s(b)(2) (1982).

[14] 17 CFR 200.30–3(a)(12) (1989).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Aviation Services West, Inc.; d/b/a Lake Powell Air Service, d/b/a Cedar City Air Service, d/b/a Kanab Air Service, d/b/a Arizona Air

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 90–6–28, Order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Aviation Services West, Inc. d/b/a Lake Powell Air Service d/b/a Cedar City Air Service d/b/a Kanab Air Service d/b/a Arizona Air is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation 400 Seventh Street, SW., Washington DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: June 12, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–14081 Filed 6–18–90; 8:45 am]

BILLING CODE 4910–62–M

Hearings, etc: New Route Opportunities (U.S.-Mexico)

By this notice we invite exemption and certificate applications from all U.S. carriers and designation requests from small aircraft operators interested in serving the following routes:

San Francisco-San Jose del Cabo
Los Angeles-Mazatlan
Los Angeles-Puerto Vallarta
Los Angeles-Guadalajara

Amendments to the U.S.-Mexico Air Transport Agreement, signed September 23, 1988, provided for extensive new route opportunities for the carriers of both countries. Since the Agreement was finalized, the Governments of both countries have agreed to expand further certain of the route opportunities defined. Most recently, the United States and Mexico have agreed to allow service on a new route—between San Francisco and San Jose del Cabo. Additionally, they have agreed to allow the designation of an additional carrier on the Los Angeles-Mazatlan, Puerto Vallarta, Guadalajara routes. (Delta holds one of these designations and currently serves the markets.) Based on the above, we invite carriers to file applications for exemption and/or certificate authority and designation requests for the city-pair markets listed above no later than July 2, 1990. Competing applications and answers shall be due no later than July 9, 1990, and responsive pleadings no later than July 16, 1990.

Applications should be filed pursuant to subpart Q and part 302 of the

Department's regulations. Applications should be filed with the Department's Docket Section, room 4107, 400 Seventh Street, SW., Washington, DC 20590. Requests for designation from small aircraft operators should be filed in triplicate with the Department's U.S. Air Carrier Licensing Division, P–45.1, room 6412, at the same address.

Dated: June 13, 1990.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 90–14082 Filed 6–18–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–90–27]

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 July 9, 1990.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (ACC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591

FOR FURTHER INFORMATION CONTACT: 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 June 13, 1990.

Debbie Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25728.
Petitioner: Trans World Airlines, Inc.
Sections of the FAR Affected: 14 CFR part 121, appendix H
Description of Relief Sought: To extend Exemption No. 5097, as amended, that allows petitioner to upgrade L–1011 flight engineers to L–1011 seconds in command in a Phase II simulator without receiving any training or checking in the actual airplane. Exemption No. 5097, as amended, will expire on November 30, 1990.

Docket No.: 26175.
Petitioner: Experimental Aircraft Association.
Sections of the FAR Affected: 14 CFR 91.42(e) and 91.169(e).
Description of Relief Sought: To allow petitioner and its members to submit an "on condition" inspection program to the FAA in lieu of prescribed retirement or life limited times for various aircraft parts or components.

Docket No.: 26220.
Petitioner: Mesaba Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.333 and 121.337(d)(2).
Description of Relief Sought: To allow petitioner to operate its Fokker F–27 aircraft for 120 days past the July 31, 1990, compliance date without those aircraft being equipped with protective breathing equipment for the third flight crewmember and oxygen for emergency descent purposes.

Dispositions of Petitions

Docket No.: 25816.
Petitioner: American Flyers.
Sections of the FAR Affected: 14 CFR 63.17(a).
Description of Relief Sought/ Disposition: To allow petitioner to administer and grade the flight engineer written test following completion of its flight engineer ground school.

Denial, June 7, 1990, Exemption No. 5186

Docket No.: 26111.
Petitioner: American Airlines Inc.
Sections of the FAR Affected: 14 CFR 121.131(c).
Description of Relief Sought/ Disposition: To allow petitioner to utilize compact disc read only memory (CD–ROM) technology for maintenance information and instruction instead of printed page form or microfilm.

Grant, May 31, 1990, Exemption No. 5184

Docket No.: 26123.
Petitioner: Bell Helicopter Textron Inc.
Sections of the FAR Affected: 14 CFR 133.45(e)(1).
Description of Relief Sought/ Disposition: To allow petitioner to perform a proposed training exercise for Dallas/Ft. Worth firefighters involving lifting personnel in a suspended Billy Pugh safety net in a helicopter that does not have the capacity of sustained flight in the event of an engine failure.

Denial, May 18, 1990, Exemption No. 5185

Docket No.: 26247.
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.411 (a)(1), (a)(2), (a)(3), and (a)(6) and 121.413 (b) and (c).
Description of Relief Sought/ Disposition: To allow petitioner to utilize certain highly qualified pilot flight and simulator instructors from FlightSafety, Canada, for the purpose of training petitioner's initial cadre of pilots in the Dash 8–100 type airplane in Canada without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121.

Grant, May 31, 1990, Exemption No. 5182

Docket No.: 021NM.
Petitioner: Boeing Commercial Airplanes.
Sections of the FAR Affected: 14 CFR 25.807(c)(2).
Description of Relief Sought/ Disposition: To allow a total passenger increase on the Boeing 757 from 219 to 231 when the number 2 door is equipped with a dual lane escape slide and certain interior modifications.

Denial, May 30, 1990, Exemption No. 5181

[FR Doc. 90–14102 Filed 6–18–90; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation

Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 16, at 9 a.m., through July 20, 1990, at 4 p.m.

ADDRESSES: The meeting will be held at the Pacific Beach Hotel, 2490 Kalakaua Avenue, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Mr. John Mayrhofer, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from July 16, at 9 a.m., through July 20, 1990, at 4 p.m., at the Pacific Beach Hotel, 2490 Kalakaua Avenue, Honolulu, Hawaii. The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 13, 1990. The next quarterly meeting of the FAA ATPAC is planned to be held from October 22 through October 26, 1990, in Washington, DC, and the FAA Technical Center, Atlantic City, New Jersey. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on June 13, 1990.

John Mayrhofer,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 90–14100 Filed 6–18–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 13, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0906.
Form Number: 8362.
Type of Review: Extension.
Title: Currency Transaction Report by Casinos.
Description: Casinos have to report currency transactions of more than $10,000 within 15 days of the transaction. A casino is defined as one licensed by a state or local government having gross annual gaming revenue in excess of $1,000,000.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Response: 38 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 19,063 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports, Management Officer.

[FR Doc. 90–14117 Filed 6–18–90; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

June 13, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0102.
Former Number: CC 7610–01 and CC 7610–02.
Type of Review: Extension.
Title: Notice of and Report of International Activity.
Description: The OCC needs to monitor, evaluate, and examine certain foreign activities of national banks. These forms are an information collection tool. The information is used to update our data base which enables us to monitor the overseas activities. It also triggers an evaluation of the activity for prudential and legal purposes. Affects national banks with overseas operations.
Respondents: Businesses or other for-profit, Small business or organizations.
Estimated Number of Respondents: 104.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 104 hours.
Clearance Officer: John Ference (202) 447–1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washingotn, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 90–14118 Filed 6–18–90; 8:45 am]

BILLING CODE 4810–33–M

Office of Thrift Supervision

Home Federal Savings Bank of Worcester; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Home Federal Savings Bank of

Worcester, Worcester, Massachusetts ("Savings Bank") on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14084 Filed 6-19-90; 8:45 am]

BILLING CODE 6720-01-M

Hometown Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Hometown Savings Bank, F.S.B., Delphi, Indiana ("Savings Bank") on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14085 Filed 6-18-90; 8:45 am]

BILLING CODE 6720-01-M

American Savings and Loan Association, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for American Savings and Loan Association, F.A., New Orleans, Louisiana, Docket No. 8618, on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14086 Filed 6-18-90; 8:45 am]

BILLING CODE 6720-01-M

Aspen Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Aspen Savings Bank, F.S.B., Aspen, Colorado, ("Savings Bank"), on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14087 Filed 6-18-90; 8:45 am]

BILLING CODE 6720-01-M

East Texas Savings and Loan Association, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for East Texas Savings and Loan Association, F.A., Tyler, Texas ("Association"), on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14088 Filed 6-18-90; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association, Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association, Largo, Florida ("Association"), on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14089 Filed 6-18-90; 8:45 am]

BILLING CODE 6720-01-M

Home Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Home Federal Savings Bank, Worcester, Massachusetts ("Savings Bank") on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14090 Filed 6-18-90; 8:45 am]

BILLING CODE 6720-01-M

Hometown Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Hometown Federal Savings Bank, Delphi, Indiana ("Savings Bank") on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14091 Filed 6-18-90; 8:45 am]

BILLING CODE 6720-01-M

Lincoln Savings and Loan Association, F.A., Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Lincoln Savings and Loan Association, F.A., Miami, Florida ("Association"), on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14092 Filed 6-18-90; 8:45am]

BILLING CODE 6720-01-M

Southside Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301

of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southside Federal Savings and Loan Association, Austin, Texas ("Association"), on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14093 Filed 6-18-90; 8:45am]

BILLING CODE 6720-01-M

Valley Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Valley Savings Bank, F.S.B., Roswell, New Mexico, Docket No. 8645, on June 8, 1990.

Dated: June 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14094 Filed 6-18-90; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Joseph Wright of Derby" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, N.Y., beginning on or about September 6, 1990, to on or about December 2, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: June 13, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-14136 Filed 6-18-90; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619-5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 55, No. 118
Tuesday, June 19, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 6, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–14270 Filed 6–15–90; 1:55 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 13, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–14271 Filed 6–15–90; 1:55 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 20, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–14272 Filed 6–15–90; 1:55 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 27, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–14273 Filed 6–15–90; 1:55 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Meeting Agenda

TIME AND DATE: 2:30 p.m., Monday, June 18, 1990

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: ANPR on Motar Shell Fireworks.

The Commission will consider an Advance Notice of Proposed Rulemaking (ANPR) that would begin a proceeding to regulate reloadable tube aerial shell fireworks devices.

The Commission decided by unanimous vote that agency business required scheduling this meeting without the normal seven days notice. 6/14/90.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION CALL: 301–492–5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Dated: June 15, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–14274 Filed 6–15–90; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Meeting Agenda

TIME AND DATE: 10:00 a.m., Thursday, June 21, 1990

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION CALL: 301–492–5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Dated: June 15, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–14275 Filed 6–15–90; 1:56 pm]

BILLING CODE 6355–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Meeting

TIME AND DATE: 10:00 a.m., Thursday, June 14, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)]

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act on the following:

2. Big Horn Calcium Company, Docket No. WEST 89–377–RM, etc. (Continued consideration of a Petition for Interlocutory Review.)

It was determined by a unanimous vote of Commissioners that this item be included in the discussion and that no earlier announcement of the addition was possible. It was also determined that is be discussed in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay 1–800–877–8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90–14227 Filed 6–15–90; 1:51 p.m.]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Monday, June 25, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. 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: June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14317 Filed 6–15–90; 4:00 pm]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 26, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31505, *Rio Grande Industries, Inc., et al.—Purchase and Related Trackage Rights—Soo Line Railroad Company Between Kansas City, MO and Chicago, IL.*

AB No. 55 (Sub-No. 336), *CSX Transportation, Inc.—Abandonment Between Dayton and Arcanum—Darke, Preble, and Montgomery Counties, OH.*

AB No. 286 (Sub-No. 2X), *The New York, Susquehanna and Western Railway Corporation—Abandonment Exemption—Portion of the Edgewater Branch in Bergen County, NJ.*

Ex Parte No. 346 (Sub-No. 23), *Railroad Exemption—Filing Quotations Under Section 10721.*

Finance Docket No. 31566, *The Baltimore and Ohio Railroad Company—Exemption—Abandonment In Harrison, Dodridge, Ritchie and Wood Counties, WV.*

Docket No. 40131 (Sub-No. 23), *Askley Creek Phosphate Company v. Chevron Pipe Line Company.*

Finance Docket No. 21478 (Sub-No. 12), *Great Northern Pacific & Burlington Lines, Inc.—Merger—Great Northern Railway in the Matter of Paul E. Van Blaricom.*

Finance Docket No. 30965 (Sub-No. 2), *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company* [1]

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,

Secretary.

[FR Doc. 90–14249 Filed 6–15–90; 1:53 pm]

BILLING CODE 7035–01–M

INTERNATIONAL TRADE COMMISSION

Emergency Notice of Change in Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 23834—dated June 12, 1990.

CHANGE OF DATE OF MEETING:

Original Date: Thursday, June 21, 1990 at 9:00 a.m.

New Date: Tuesday, June 19, 1990 at 3:00 p.m.

Notice is given that a Commission meeting was scheduled at 9:00 a.m., on June 21, 1990 and in conformity with 19 C.F.R. 201.37(a), Commissioners Burnsdale, Cass, Eckes, Rohr, and Newquist have voted to change the date of the meeting to June 19, 1990 at 3:00 p.m.

Commissioners Burnsdale, Cass, Eckes, Rohr, and Newquist determined by circulation of an action jacket that Commission business requires the change in the date and time of this meeting, affirmed that no earlier notice of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: June 15, 1990.

Kenneth Mason,

Secretary.

[FR Doc. 90–14241 Filed 6–15–90; 1:52 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, June 27, 1990 at 10:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731–TA–461 (P) (Gray Portland Cement and Cement Clinker from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: June 12, 1990.

Kenneth Mason,

Secretary.

[FR Doc. 90–14269 Filed 6–15–90; 1:54 pm]

BILLING CODE 7020–02–M

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[1] This proceeding embraces Finance Docket Nos. 30925, 30951, 30955, and 30965 (Sub-No. 1), 30966, and 30967, 30972, 30981, 30993, 31002, 31003, 31015, 31023, 31086, 31103, 31115, 31125, and 31161.

federal register

Tuesday,
June 19, 1990

Part II

Department of Housing and Urban Development

Office of Assistant Secretary

Fair Housing Initiatives Program; Competitive Solicitation; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-90-3062; FR-2811-N-01]

Fair Housing Initiatives Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability.

SUMMARY: This Notice solicits applications, from nonprofit organizations and other private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices, for funding under the Private Enforcement Initiative of the Fair Housing Initiatives Program (FHIP). Applicants must meet specific eligibility criteria set forth in this Notice and in 24 CFR part 125 to qualify for consideration under this program. Approximately $3.9 million is available under this Notice for Private Enforcement Initiative funding.

A maximum amount of $3 million will be allocated for testing activities and approximately $900,000 will fund other enforcement activities.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Director, Programs Division, Office of Fair Housing and Equal Opportunity, Room 5218, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone (202) 708-3214 (Voice and TDD). (This is not a toll-free number.) Application kits may be requested in writing or by telephone from the person listed above. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

DATES: The specific date for receipt of applications will be announced in the application kits, but will be no earlier than August 3, 1990.

SUPPLEMENTARY INFORMATION: The Fair Housing Initiatives Program (FHIP), authorizes the Secretary of Housing and Urban Development to provide funding to State and local governments or their agencies, public or private non-profit organizations, or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. These funds will enable the recipients to carry out activities designed to obtain enforcement of the rights granted by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. 3601-3619, or by substantially equivalent State or local fair housing laws, and education and outreach activities designed to inform the public concerning rights and obligations under such Federal, State or local laws prohibiting discrimination. Funding of enforcement of fair housing laws may include activities involving use of judicial as well as administrative enforcement procedures.

The FHIP has three funding categories: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. This Notice announces the availability of funding under the Private Enforcement Initiative.

Funds under the Private Enforcement Initiative are available to non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices. The purpose of these awards is to assist in developing, implementing, carrying out, or coordinating programs or activities designed to obtain enforcement of the rights granted by the Fair Housing Act or State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Fair Housing Act.

Organizations funded under the April 26, 1989 (54 FR 17872) Notice for testing under the Private Enforcement Initiative and the Education and Outreach Initiative are eligible to apply under this Notice. However, to avoid duplicate funding of activities, organizations funded under the April 26, 1989 Notice for non-testing activities under the Private Enforcement Initiative cannot apply for the same non-testing activities for which they have been or are receiving funding.

Background

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws.

Other Matters

The private enforcement initiative of the Fair Housing Initiatives Program is described in the Catalog of Federal Domestic Assistance at 14.410, Private Enforcement Initiative.

Application requirements associated with this program have been approved by OMB and assigned approval number 2529-0033.

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a governmentwide interim rule advising recipients and subrecipients of Federal contracts, grants, cooperative agreements, and loans of a new statutory prohibition against use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. (See attachments 1 and 2 at the end of this notice for the language for the certification and disclosure.) Applicants should refer to the governmentwide rule for additional guidance, if needed. As indicated in the attachments, the law provides substantial monetary penalties for failure to file the required certification or disclosure.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

I. General Provisions Governing Applications for Assistance

Recipients will be expected to comply with the requirements of section 504 of the Rehabilitation Act of 1973, 28 U.S.C. 794, and 24 CFR part 8. Section 504

prohibits discrimination based on handicap in federally assisted programs. Each application will be assessed against the general selection criteria set forth in this Notice of Funding Availability. Each application for funding under the Fair Housing Initiatives Program must contain the items set forth below:

A. A description of the practice or practices at the community, regional or national level which have affected adversely the achievement of the goal of fair housing. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities;

B. A description of the specific activities to be conducted with FHIP funds, including the final products and any reports to be produced, the cost of each activity proposed and a schedule for completion of the activities;

C. A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

D. A statement indicating the need for Federal funding in support of the proposed project and an estimate of other public or private resources that may be available to assist the proposed activities;

E. A description of the procedures to be used by the applicant for monitoring the progress and for assisting the result of the proposed activities;

F. A description of the benefits that successful completion of the project will produce to enhance fair housing and the concerns identified, and the indicators by which these benefits are to be measured, and;

G. A description of the expected long-term usefulness of project results.

II. General Selection Criteria for Ranking Applications for Assistance

All projects proposed in applications will be ranked on the basis of the following criteria for selection:

A. The anticipated impact of the project proposed on the concerns identified in the application (25 points);

B. The extent to which the applicant's professional and organizational experience will further the achievement of project goals (25 points);

C. The extent to which the project will provide benefits in support of fair housing after funded activities have been completed (20 points);

D. The extent to which the project utilizes other public or private resources that may be available (20 points); and

E. The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner (10 points).

III. Further Clarification of General Selection Criteria

A. In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.)

B. In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the experience and qualifications of existing personnel identified for key project positions, or a description of the process and qualifications to be used for selection of key personnel, including subcontractors/consultants, as well as the organization's past and current experience.

C. In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed.

D. In determining the extent to which other public or private resources are available, HUD will consider both monetary and physical resources.

E. In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner, HUD will consider the reasonableness of the proposed timetable for implementation and completion of the project, as well as the adequacy and clarity of proposed procedures to be used by the agency for monitoring progress of the project and ensuring its timely completion. HUD will also consider the degree to which the applicant proposes to use funds for program costs, as opposed to administrative costs. (Applicants that have high administrative costs will receive a lower score on this factor.)

IV. Cost Factors

The Department expects to fund multiple applications as a result of this NOFA. At some point, however, two or more complete and eligible applications, after evaluation against the General Selection Criteria and consideration of geographic distribution, may be considered equal in technical merit. At that point, the project's relative evaluated cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded when costs are determined to be unrealistically low or unreasonably high.

V. Program Policy Factor

After eligible applications are evaluated against the factors for award and assigned a score, HUD will fund in rank order until all available funds have been obligated, or until there are no acceptable applications. In making awards, the Assistant Secretary may exercise discretion to make awards out of rank order only for the purpose of ensuring equitable geographical distribution.

VI. Private Enforcement Initiative

A. Eligibility

The types of organizations eligible to receive assistance under the Private Enforcement Initiative are private non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices. Organizations which can be eligible include, for example, private nonprofit fair housing and civil rights groups. To be eligible for funding for testing activities, organizations must have at least one year of experience in carrying out a program to prevent or eliminate housing discrimination practices and sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully.

All applications for funding must have relevance to matters pertaining to housing discrimination based on race, color, religion, sex, handicap, familial status or national origin.

B. Scope

Applications are solicited for specialized project proposals as described in 24 CFR 125.403 and 125.404, and in this Notice.

Project applications may involve:

1. Conducting investigations of systemic housing discrimination;

2. Professionally conducting testing or other investigative support for administrative and judicial enforcement;

3. Linking fair housing organizations regionally in enforcement activities designed to combat broader market discriminatory practices; or

4. Establishing effective means of meeting legal expenses in support of litigation of fair housing cases.

No recipient of assistance under the Private Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

An independent evaluation of the FHIP Testing Guidelines will be conducted during the implementation of the programs funded under this Notice. This evaluation will be conducted by HUD's Office of Policy Development and Research. Recipients of funds will be required to cooperate fully with this evaluation.

Recipients of funds under this Initiative shall be required to record, in a case tracking log (or title VIII Enforcement log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing; including administrative or judicial case processing; the cost of testing activities and case processing; and case outcome or relief provided.

The recipient must agree to notify HUD of all complaints and cases involving matters cognizable under the Federal Fair Housing Act. Notification procedures will be provided in the Request for Applications (RFA).

C. Application for Funding

In addition to meeting the application requirements contained in section I. above, all proposals for testing under the Private Enforcement Initiative must include:

1. Documentation that the applicant has at least one year of experience in carrying out a program to prevent or eliminate discriminatory housing practices, and has sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully;

2. Documentation supporting the requirement that FHIP funded tests may be undertaken ony if there has been a "bona fide allegation" of a discriminatory housing practice;

3. A certification providing that the applicant will not solicit funds from or seek to provide fair housing, educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12-month period following a test;

4. A description of the process to be used to recruit testers;

5. A description of the tester training program;

6. Copies of forms used to document allegations and to record the experience of testers; and

7. A written agreement to cooperate fully with the HUD sponsored evaluation of this program.

Performance/Sanctions

A recipient failing to comply with the testing requirements or the procedures set forth in its application for funding will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the Initiative, reduction or limitation of further funding for investigatory activities, and denial of further participation in programs of the Department or of any Federal agency. Failure to perform satisfactorily under the first year's funding may result in the suspension or termination of funding for the second year's award.

D. Guidelines for Conduct of Funded Testing

Testing activities funded under the Private Enforcement Initiative must conform to the guidelines in 24 CFR 125.405. These guidelines are not intended to restrict individuals or entities participating in the Fair Housing Initiatives Program from pursuing any right or remedy guaranteed by Federal law, or from the conduct of other testing or other investigative activities not funded under the Private Enforcement Initiative.

Eligible testing activities must be conducted in accordance with procedures contained in the application for assistance. These procedures shall include the following:

1. A formal recruitment process designed to obtain a pool of credible and objective persons to serve as testers. Recruits must not have prior felony convictions or convictions of crimes involving fraud or perjury;

2. A tester training program which will:

a. Require the careful recordation of all relevant information on standardized forms, signed by the respective testers, following completion of the test;

b. Prohibit any communication between pairs of testers relating to the conduct of the test, or to testing experiences or results, until all information has been recorded and the testers debriefed by the testing coordinator;

c. Require that the same or substantially equivalent type of housing accommodations, financing, or service be requested; and

d. Require that, to the extent practicable, testers identify themselves as having the same or substantially equivalent housing needs and demographic profile as the person who made the bona fide allegation, except for the race, color, religion, sex, handicap, familial status, national origin, or other attribute which is the basis of the alleged discrimination. In cases of testing for systemic discrimination (*e.g.*, a pattern or practice of discriminatory housing practices by a housing provider or lender), demographic profiles may vary from that of the person who made the bona fide allegation, so long as the test of each agent or owner is a "paired" test. For the purpose of these guidelines, a "paired test" means that the two testers who conduct the "paired test" shall:

i. Have the same or substantially similar demographic profiles except for their race, color, religion, handicap, familial status, sex, nationality, or other attribute which is the basis of the alleged discrimination;

ii. Have the same or substantially similar housing requirements;

iii. Initiate the test at the same office or in the same or substantially similar transactional conditions and circumstances; and

iv. Conduct the test in a timely manner.

3. A tester selection, assignment and control system which will assure that neither the tester, nor the organization conducting the test, including its employees and agents—

a. Has an economic interest in the outcome of the test, (without prejudice to the right of any person or entity to recover damages for any cognizable injury); or

b. Has a specific bias toward either the person who made the bona fide allegation or the respondent; is a relative of one of the parties in the case; has had any employment or affiliation within one year with the person or organization to be tested; is a licensed competitor of such person or organization in the listing, rental, sale, or financing of real estate property; or has any other specific bias or conflict or interest which would prevent or limit his or her objectivity or fairness.

E. Program Totals and Funding Estimates

Approximately $3.9 million is available for funding under the Private Enforcement Initiative. Approximately $3 million will be reserved for funding of testing activities. However, HUD retains the right to shift funds to non-testing activities if an insufficient number of acceptable applications for testing activities is received. Non-testing funds will not be shifted to testing activities funded under this Notice. Acceptability will be determined based upon criteria for eligibility, factors for award and completeness of budget information. (HUD anticipates that approximately 40 projects will be funded.)

F. Applications

Applicants may propose both testing and non-testing activities in the same application. Applicants must submit all information required in the applicant kit, and must include sufficient information to establish that the application meets the criteria set forth at sections I. and III. C., above.

Projects should be no longer than 13 months in duration. Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

G. Award Procedures

Applications for funding under this Initiative will be evaluated competitively, and awarded points based on the Factors for Award identified in section II. agove. The final decision rests with the Assistant Secretary or his designee.

VIII. Applicant Notification and Award Procedures

A. Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible. Selectees are expected to be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

B. Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations, and to submit application revisions resulting from those negotiations. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made.

If an award is not made to an applicant whose application is above the initial funding threshold because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen below the initial threshold, HUD will establish a new funding threshold and proceed as described in the preceding paragraph.

C. Funding Instrument

HUD expects to award a fixed-price cooperative agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note; Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); section 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Dated: June 11, 1990.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

BILLING CODE 4210-28-M

ATTACHMENT 1 - Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

ATTACHMENT 2

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

[FR Doc. 90-14116 Filed 6-18-90; 8:45 am]
BILLING CODE 4210-28-C

federal register

Tuesday
June 19, 1990

Part III

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4 et al.
Revision and Recodification of Wine Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 18, 19, 24, 25, 70, 170, 231, 240 and 252

[T.D. ATF-299; Ref: Notice Nos. 543 and 584]

RIN 1512-AA42, 1512-AA61

Revision and Recodification of Wine Regulations (78R-16P and 83R-27P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This document implements the revision and recodification of all Internal Revenue Code (IRC) wine regulations. Many existing IRC regulations inadequately reflect wine industry technological advances. This extensive revision was done to simplify, modernize and, to the maximum extent possible under existing law, liberalize the wine regulations to achieve a reduced regulatory burden and a resource savings for the wine industry and the Government. Additionally, this final rule recodifies the regulations pertaining to wine issued under the IRC into a new 27 CFR part 24. This final rule also incorporates an updated list of materials and processes authorized for the production of wine and for the treatment of juice, wine and distilling material.

EFFECTIVE DATE: The regulations in § 24.246 are effective December 17, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1990. All other regulations are effective July 19, 1990.

FOR FURTHER INFORMATION CONTACT: Coordinator James A. Hunt or Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202/566-7626).

SUPPLEMENTARY INFORMATION:

Background

The wine regulations have remained essentially unchanged for over 30 years while the wine industry has changed dramatically, especially in the past few years. Because of technological advances, the wine regulations were in need of updating. Many of the present regulatory requirements could be eliminated. A revision of the wine regulations was started in 1979 with an advance notice of proposed rulemaking, Notice No. 320. Information was received from the wine industry and other interested persons on how the wine regulations could be revised. Regulations on records and reports were determined to be in particular need of revision and this project was completed with the publication of Treasury Decision ATF-63 in the **Federal Register** on January 24, 1980. The Wine Institute submitted a number of suggested wine regulation changes for ATF's consideration in 1982. The first action was to delete subpart XX from 27 CFR part 240, thereby eliminating approximately 80 regulatory sections (Treasury Decision ATF-149 (48 FR 46526), published in the **Federal Register** on October 13, 1983). The next action was a revision of the regulations for materials and processes authorized for treatment of wine and juice, Treasury Decision ATF-182 (49 FR 37510), published in the **Federal Register** on September 24, 1984. A notice of proposed rulemaking, Notice No. 543 (49 FR 37527), was published with TD ATF-182 on further amendments to the materials and processes authorized for wine. This final rule contains a summary of the comments received and the revisions made in connection with Notice No. 543.

In the March 7, 1986, issue of the **Federal Register**, ATF published Notice No. 584 (51 FR 80981) proposing revisions of the wine regulations currently prescribed in title 27, Code of Federal Regulations, parts 170, 231, and 240, and recodifying these regulations into a new part 24. The proposed revision recognized technological advances in production, deleted numerous outdated and repetitive regulations, simplified and clarified regulatory language, and reduced many regulatory burdens placed on the wine industry. The proposed revision reduced the number of regulatory subparts from 60 to 15, the number of regulatory sections from 450 to 225, and the regulatory language by about 65 percent. In addition, it was proposed to eliminate or incorporate into the new regulations over 90 ATF Rulings and Revenue Rulings and to eliminate 8 of 14 winery forms.

Notice No. 584 contained in the preamble an indexed (Derivation) table to show the present law, regulation or ruling from which each new regulatory section was derived. Therefore, the indexed table is not repeated in this document.

ATF specifically requested public comment on the proposed revision of the wine regulations which are summarized as follows:

Subpart A—Scope

This subpart revision was to conform the part headings in the regulations to those appearing in subchapter F of 26 U.S.C. chapter 51. Also, the status and operation of existing bonded winery, bonded wine cellar, or taxpaid wine bottling house premises after the effective date of these regulations was addressed.

Subpart B—Definitions

This subpart contained numerous definitions which were revised to be in closer conformity with applicable statutory provisions. New definitions which reflect advances in wine technology or which improve understanding of the wine regulations were added such as chaptalization, Brix, and use of grams per liter instead of parts per thousand.

Subpart C—Administrative and Miscellaneous Provisions

This new subpart consolidated many wine regulations which are currently dispersed among 27 CFR parts 170, 231, and 240. Several procedural provisions in this subpart are not repeated in other subpart sections but are simply referred to by section in the other subparts when applicable. Found in this proposed subpart are the regulations pertaining to: Authorities of the Director, regional director (compliance), and ATF officers; facilities and assistance; employer identification number; occupational taxes; assessments; claims; tax exempt wine; formulas; essences; conveyance of wine and spirits on wine premises; and samples. Provisions of Treasury Decision ATF-149 (48 FR 46426) regarding samples submitted with formulas were incorporated. The notice requirement for samples of spirits was eliminated. Also, specific requirements relating to office facilities were deleted.

Subpart D—Establishment and Operations

This subpart contained regulations relating to the establishment of wine premises. This included the types of wine premises, application procedures, changes in existing wine premises, alternation of the wine premises, bonds and consents of surety, and discontinuance of wine operations. The proposed regulations provided for the establishment of a bonded winery, bonded wine cellar, bonded wine warehouse, or taxpaid wine bottling house which are operationally termed wine premises. Wine premises included both bonded wine premises and taxpaid wine premises. Segregation and identification of untaxpaid wine or

spirits, taxpaid wine or spirits, and other products on wine premises was required, but a physical barrier such as a partition, fence, or wall would rarely be required. The proposed sections on alternation reflected changes in the way proprietors want to use wine premises in the wine industry. A taxpaid wine bottling house could be established if only operations involving taxpaid wine were desired. Application requirements were reduced. Many requirements relating to information used to evaluate an application were eliminated because ATF already has the information or determined it is not necessary. A single application form, ATF Form 5120.25, was proposed to apply for the establishment of a bonded winery, bonded wine cellar or taxpaid wine bottling house. The requirement to submit a plat depicting the premises was deleted because, in most applications, a description of the premises is sufficient. Since plats are usually prepared by an architect or engineer, this requirement was considered to put an unnecessary burden on the proprietor of a small winery. The provisions relating to the execution and filing of bonds and consents of surety were extensively revised. The minimum threshhold at which a tax deferral bond is required has been increased from $100 to $500. This would save most winery proprietors the expense and paperwork involved in obtaining a tax deferral bond. In addition, ATF proposed that the coverage of the bonded wine cellar bond be broadened to cover volatile fruit-flavor concentrate or other commodities subject to tax under 26 U.S.C. chapter 51 which are in transit to or on bonded wine premises. This would eliminate the need for a separate bond covering volatile fruit-flavor concentrate and for many of the currently required consents of surety. ATF further proposed that a single form be used for both the bonded wine cellar bond and the tax deferral bond.

Subpart E—Construction and Equipment

The regulatory requirements were significantly reduced. The requirements for construction and equipment would allow for a greater degree of flexibility in establishing and operating wine premises.

Subpart F—Production of Wine

The regulations for the production of wine were completely revised. Separate provisions which currently exist for grape and fruit wine production were consolidated, and, when appropriate, noted as to whether a provision was applicable to grape, fruit, or berry wine production. A new section allowed for chaptalization, i.e., the addition of pure dry sugar to juice for the purpose of developing alcohol, so that wine may be produced from juice having both low sugar and low acid. The sections on amelioration and sweetening were completely revised to make the requirements for these operations easier to understand. The sections on use of concentrated and unconcentrated fruit juice, sugar, acid, distillates containing aldehydes, and volatile fruit-flavor concentrate were extensively revised and put into this new subpart.

Subpart G—Production of Effervescent Wine

The proposal revised the subpart to eliminate the requirement for filing a formula and statement of process. This was proposed because the processing methods and basic materials used for effervescent wine production are no longer considered unique. The subpart incorporated industry technological advances such as the bulk process and tank transfer methods of production in the revisions.

Subpart H—Production of Special Natural Wine

The subpart was reduced to the essentials by moving to another subpart the regulations on essences and the procedures involved with obtaining formulas. This was done because the requirements for essences and formulas were also applicable to wines other than special natural wine.

Subpart I—Production of Agricultural Wine

This subpart was also reduced in volume by combining a few of the sections and referencing the formula requirements.

Subpart J—Production of Other than Standard Wine

The regulations were revised to be more easily understood. Added to this subpart was a provision which provides for the blending of wines made from different kinds of fruits. The section on "Other wine", 24.218, allows for the production of wine with sugar and water beyond the limitations prescribed for standard wine if the basic character is derived from the primary winemaking material. Also, the addition of wine spirits to "Other wine" was specifically allowed. Additionally, specifications for salted wine were incorporated in the section covering wine and wine products not for beverage use.

Subpart K—Spirits

The notice contained provisions for the use of wine spirits in beverage wine production and for use of spirits in nonbeverage wine production. The application to withdraw wine spirits and the report of wine spirits added to wine were eliminated. The new regulations incorporated rulings allowing for the addition of spirits without Government supervision, which has proved to be an efficient method of operation for the wine industry and the Government for several years.

Subpart L—Storage, Treatment and Finishing of Wine

Regulations relating to materials and processes authorized for the treatment of standard wine, juice and distilling material, were addressed in Notice No. 413 (47 FR 26399) published on June 18, 1982, and Notice No. 543 (49 FR 37527) and Treasury Decision ATF-182 (49 FR 37510) published on September 24, 1984. These complex and somewhat controversial sections were again opened for review and comment. Also, included in this new subpart were several sections dealing specifically with the bottling, packing, and labeling of wine. Additionally, a new section was proposed to cover the aging of wine after bottling or packing. Due to the advent of low alcohol wine not covered by the labeling provisions of the FAA Act, a label for any wine under 7 percent alcohol by volume is required to show the actual alcohol percent by volume with a tolerance of plus or minus 10 percent and be designated a wine.

Subpart M—Losses of Wine

This important subject was consolidated into one subpart to allow for an easy reference to the method of reporting and accounting for losses of wine.

Subpart N—Removal, Return and Receipt of Wine

This subpart was divided into sections to address taxpaid removals and payment by check, cash, money order or EFT, transfer of wine in bond, removals without payment of tax, return of taxpaid wine to bond, and taxpaid wine operations. One form, Excise Tax Return, ATF F 5000.24, would replace the Wine Tax Return, ATF F 5120.27, and Prepayment Return—Wine Tax, ATF F 5120.37, forms. Due to a significant increase in the past few years in the number of small wineries paying less than $500 in wine tax annually, ATF proposed to allow these taxpayers to file returns annually rather than twice a month. These changes would eliminate the necessity of filing and processing over 10,000 tax returns which are currently being filed each

year. ATF Form 703, Transfer of Wine in Bond, was eliminated, resulting in another significant reduction in paperwork burden. The new section on taxpaid wine operations incorporated much of what is now in 27 CFR Part 231—Taxpaid Wine Bottling Houses.

Subpart O—Records and Reports

This subpart was updated and revised to make it easier to find the recordkeeping requirements. Recordkeeping requirements on maintaining an audit trail to allow verification of label information were more clearly defined. A significant change for a winery with limited operations was to allow source records to be used as the daily record and use of an abbreviated monthly summary record of operations, such as use of an adding machine tape.

Comments

In response to Notice No. 543, written comments were received from 60 persons. Some of the commenters submitted multiple comments. A list of the names of the commenters are as follows:

1. James C. Doherty, NL Industries, Inc., Hightstown, NJ
2. Andrew K. Quady, Quady Winery, Madera, BW–CA–4684
3. Lee Eichele, East-Side Winery, Lodi, BW–CA–3863
4. R.A. Mitchell, Phoenix, AR
5. Richard L. Arrowood, Chateau St. Jean Vineyards and Winery, Kenwood, BW–CA–4710
6. Roger D. Middlekauff, Ad Hoc Enzyme Technical Committee, Washington, DC
7. I.R. Rogerson, Co-Operative Wholesale Society Ltd., Manchester, England
8. F.S. Nury, Ph.D., California State University (Fresno)
9. Hortense S. Macon, GRAS Review Branch, U.S. Food and Drug Administration
10. Meyer H. Robinson, Monarch Wine Co., Inc., Brooklyn, BW–NY–21
11. Paul N. Charleston, ISC Wines of California, Inc., Asti, BW–CA–1589
12. Paul Bergna, Sebastiani Vineyards, Sonoma, BW–CA–876
13. Charles W. Catherman, Jr., St. Julian Wine Co., Paw Paw, BW–MI–23
14. Robert F. Sagle, Counsel, The Association of American Vintners, Watkins Glen, NY
15. Daniel G. Robinson, Widmer's Wine Cellars, Inc., Dunkirk, BW–NY–43
16. Alice K. Jameson, Genencor, Inc., San Francisco, CA
17. Steve Bertolucci, Sutter Home Winery, Inc., St. Helena, BW–CA–1007
18. Lester F. Hardy, Cain Cellars, San Jose, BW–CA–4670
19. Barry Gnekow, J. Lohr Winery, San Jose, BW–CA–4670
20. Dr. R.J. Harding, Food Science Division, Ministry of Agriculture, Fisheries and Food, London, England
21. Robin W. Goswell, John Harvey & Sons Limited, Bristol, England
22. Robin W. Goswell, John Harvey & Sons Limited, Bristol, England
23. Kevin McGuire, ISC Wines of California, Inc., Asti, BW–CA–1589
24. Paul N. Charleston, ISC Wines of California, Inc., Asti, BW–CA–1589
25. Richard R. Nelson, Canandaigua Wine Co., Inc., BW–NY–585
26. John F. Wilk, Sterling Forest, NY
27. A.C. Simpson, International Distillers and Vintners, Ltd., Harlow Essex, England
28. T.H. Flagg, Heublein Wines, Madera, BW–CA–22
29. Robert W. Porter, Ph.D., Scharffenberger Cellars, Talmage, BW–CA–5027
30. Jeffrey B. Meyers, Montevina Wines, Plymouth, BW–CA–4622
31. Thomas Stutz, Mirassou, San Jose, BW–CA–4255
32. Peter M. Meier, Ph.D., Millipore, Bedford, MA
33. Robert G. Blanck, Abcor, Inc., Wilmington, MA
34. Dr. Andrew C. Rice, Taylor Wine Co., Inc., Hammondsport, BW–NY–1
35. Robin W. Goswell, John Harvey & Sons Limited, Bristol, England
36. Jarl L. Opgrande, Kalama Chemical Inc., Kalama, WA
37. Morris H. Katz, Paul Masson Vineyards, Madera, BW–CA–4682
38. Peter Lewis, The Wine and Spirit Association of Great Britain and Northern Ireland, London, England
39. James F. Gallander, Ohio State University, Agricultural Research and Development Center, Wooster, OH
40. Daniel G. Robinson, Widmer's Wine Cellars, Inc., BW–NY–43
41. Dr. Wilhelm Schopen, Counselor, Agriculture, Embassy of the Federal Republic of Germany, Washington, DC
42. Jean Calvet, Calvet, Bordeaux, France
43. John A. De Luca, Wine Institute, San Francisco, CA
44. Anthony P. Debevc, The American Association of Vintners, Watkins Glen, NY
45. James F. Gallander, Ohio State University, Agricultural Research and Development Center, Wooster, OH
46. Edward G. Merritt, Central Research, Pfizer, Inc., New York, NY
47. Thomas H.E. Cottrell, New York State Agricultural Experiment Station, Cornell University, Geneva, NY
48. James F. Gallander, Ohio State University, Agricultural Research and Development Center, Wooster, OH
49. Pius Antinori, Marchesi L. EP. Antinori, Firenze, Italy
50. Rex D. Davis, National Association of Beverage Importers, Washington, DC
51. Gerad L. McCowin, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration
52. Robert G. Fries, Jr., Flavor and Extract Manufacturers' Association of the United States, Washington, DC
53. W. Milkowski, Hedges & Butler Limited, London, England
54. Dr. R.J. Harding, Ministry of Agriculture, Fisheries and Food, London, England
55. G.R. Linkovich, Heublein Spirits, Hartford, CT
56. Edward L. Korwek, Keller and Heckman, Counsel, Davison Chemical Division of W.R. Grace and Company, Columbia, MD
57. Peter B. Rall, Werger & Co., Frankfurt, Germany
58. George U. Naumburg, Jr., M.D., North Salem Vineyard, Inc., North Salem, BW–NY–660
59. Cheryl L. Markman, Almaden Vineyards, San Jose, BW–CA–145
60. John H. Barnett, ABC Laboratory, Richmond, Commonwealth of Virginia

In response to Notice No. 584 written comments were received from 23 persons. A list of the names of the commenters are as follows:

1. Howard J. Weinstein, Monarch Wine Company of Georgia
2. Dan Robinson, Widmer Winery, Naples, NY
3. Melvin Cellini, Bisceglia Brothers Wine Company, Madera, CA
4. W.W. Lanier, Richard's Wine Cellars, Petersburg, VA
5. Duncan Laney, Tenner Brothers Inc., Patrick, SC
6. Ned Cooper, Batavia Wine Cellars, Inc., Batavia, NY
7. James P. Finkle, Canandaigua Wine Company, Canandaigua, NY
8. Henry Charney, Manischewitz Wine Co., Naples, NY
9. Abraham M. Buchman, American Wine Association, New York, NY
10. Ella Mae Hudson, Ellendale Vineyards, Dallas, OR
11. Brian D. Carter, Paul Thomas Winery, Bellevue, WA
12. Kathryn Kennedy, Kathryn Kennedy Winery, Saratoga, CA
13. James F. Foltz, Keystone Foods, Inc., North East, PA
14. Reverdy Johnson, Johnson Turnbull Vineyards, Oakville, CA
15. David Reiner Wirtz, Rex Hill Winery, Newberg, OR
16. S.D. Sondall, Urbandale, IA
17. Gary B. Heck, Korbel Winery, Guerneville, CA
18. M.J. Kramer (2 comment letters), ISC Wines, San Francisco, CA
19. James P. Finkle, The Association of American Vintners, Watkins Glen, NY
20. Ted Flagg (2 comment letters), Heublein Wines, Madera, CA
21. David Paszamant, Monarch Wine Company of Georgia
22. John De Luca (2 comment letters), Wine Institute, San Francisco, CA
23. William A. Gulvin, Johnson Estate Wines, Westfield, NY

Summary of the Changes Incorporated in This Final Rule

The following paragraphs provide a summary of the comments received on Notice Nos. 543 and 584 as well as an explanation of ATF's decision concerning the comments. The paragraphs also explain changes made in the proposed regulations which were not the subject of written comment. In the time since the publication of Notice Nos. 543 and 584, a number of significant events occurred impacting the IRC wine

regulations, e.g., payment of special (occupational) tax by proprietors of wineries and taxpaid wine bottling houses, ATF assuming the responsibility for collecting wine excise taxes, and a law change which allows for a wine container fill tolerance. In addition, the Office of Management and Budget (OMB) asked ATF to again critically review the IRC wine regulations with the objective of further reducing the recordkeeping and reporting requirements. And further, requests by winery proprietors for operational variances from regulations and ATF's review of Notice No. 584 have resulted in a number of technical, clarifying and liberalizing revisions in the final rule which were not considered different enough from the proposals in the notice to require another notice of proposed rulemaking. Therefore, the following paragraphs contain an explanation of the additions, deletions and revisions of Notice Nos. 543 and 584, which are now a part of the final IRC wine regulations, 27 CFR part 24.

Subpart A—Scope

Section 24.3 Status and Operation of Existing Premises

Three commenters requested a revision of § 24.3 so that existing approved authorizations will not automatically terminate 60 days after the effective date of this final rule. We accepted the commenters, suggestion and the section now states that proprietors operating under an approved method or procedure not authorized by the new regulations have 90 days after the effective date of such regulations to notify the regional director (compliance) that they want to continue under the previous approval. We believe the new regulations are sufficiently liberalized to negate the need for most previously approved special methods or procedures. However, the revised section now allows proprietors to continue to operate under any previously approved authorization they requested until the regional director (compliance) advises that the method or procedure is inconsistent with the new wine regulations and is no longer approved.

Subpart B—Definitions

Section 24.10 Meaning of Terms

Four commenters asked for changes in several definitions. The definitions of "bank" and "banking day" are deleted in favor of using the broader term "financial institution". This change is consistent with forthcoming rulemaking for electronic fund transfers. Two commenters wanted metric units used instead of U.S. units of measure which appear in several definitions. We responded by including both units of measure in the definitions.

The definitions involving the types of wine premises were modified at the suggestion of a commenter who felt the proposed definitions might be confusing.

One commenter felt the definitions of "bottle", "bottler", "container" and "packer" were unnecessary and confusing. We have revised these terms to achieve clarity. Also, the revision makes the definition of "container" more general to fit the definition of container in 27 CFR part 4. Three commenters also wanted the definition of "lot" to include more than one bottling or packing line. We agreed that this was a necessary practical change.

The new term "chaptalization" was requested to be dropped in favor of using the term "brix adjustment". We agree the term "brix adjustment" is recognized in the trade, so the term is added parenthetically as a means of further explaining the term "chaptalization".

One commenter wanted the degrees Brix of dealcoholized wine in the definitions of "natural wine" and "specially sweetened natural wine." Since such inclusion is consistent with the statutory definition of "total solids", the technical change was made to the two definitions.

Two commenters requested the definition of "person" remain the same as the definition in part 240. The definition proposed incorporates section 7343 of the IRC, miscellaneous penalty and forfeiture provisions. Since the proposed definition of person encompasses the statutory definition of person in the IRC, we believe its inclusion in the regulations is beneficial to industry members in clarifying the scope of the term. Accordingly, the definition of "person" remains as proposed. Two commenters requested the term "dry" be deleted from the definition of "pure sugar". The sugar definitions have been revised to include a definition of "pure dry sugar", "invert sugar syrup", "liquid sugar", and "sugar". In some instances, chaptalization for example, the only sugar allowed for grape wine is pure dry sugar.

One commenter advocated returning champagne to the definition of "sparkling wine". Since the term champagne refers to a type of sparkling wine and has been in the IRC definition of sparkling wine previously, we agreed and put the term "champagne" back in the definition of sparkling wine.

A commenter correctly stated that the definition of "spirits" was omitted from the proposed definitions. The omission has been corrected.

A commenter requested that the phrase "to correct natural deficiencies" be deleted from the definition of "sweetening" because sweetening occurs after a wine is produced and any sweetening adjustments would not be made to correct a natural deficiency. We agreed with the commenter and removed the phrase from the definition of sweetening.

One commenter requested that the term "volatile fruit flavor" concentrate be more narrowly defined. We believe such a change would require further notice and comment; therefore, we are leaving the definition as it appeared in the proposal.

A commenter requested a definition of "wine cooler". We believe such a definition would require further notice and comment; therefore, this definition was not added.

Other revisions made to the wine definitions include: (1) Deleting the definition of service center due to the collection of taxes by ATF, (2) deleting New York from the definitions of electronic fund transfer and financial institution, (3) a simplification of the term "reconditioning" and (4) adding definitions for "unmerchantable wine" and "vinegar."

Subpart C—Administrative and Miscellaneous Provisions

Section 24.28 Installation of Meters, Tanks, and Other Apparatus

One commenter suggested the regional director (compliance) authority to require a proprietor to install meters, tanks, and other apparatus or to require government supervision of operations should be limited to only operations involving the use of spirits. The statutory authority for requiring such devices applies to all premises established under 26 U.S.C. chapter 51. Accordingly, we believe that the discretion to require such apparatus or supervision should include wine operations, especially where taxpayments of bulk wine may be involved.

Section 24.35 Right of Entry and Examination

One commenter objected to financial records, books of account and other non-production records being included in the section on an ATF officers right of entry and examination. Section 7602 of the IRC states, in part, that for the purposes of ascertaining the correctness

of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or collecting any such liability, the Secretary is authorized to examine any books, papers, records, or other data which may be relevant or material to such inquiry. If financial records, books of account and other non-production records are necessary to determine compliance with internal revenue tax laws and regulations, they are by law subject to examination. Therefore, the language of the section remains similar to the section proposed in Notice No. 584.

Section 24.41 Office Facilities

Two commenters wanted the furnishing of a suitable office facility for the exclusive use of an ATF officer, if necessary, to be limited to premises with wine spirits operations. We have revised the section to state that the regional director (compliance) may require the proprietor to furnish temporarily a suitable work area, desk and necessary equipment for the use of ATF officers in performing Governmental duties, whether or not such office space is located at the specific premises where regulated operations occur or at corporate business offices where no regulated activity occurs.

Section 24.50–24.55 Occupational Taxes

The changes in special (occupational) tax due to Public Law 100–203 required a complete revision of the special (occupational) tax regulation sections. This final rule includes the current implementation of regulations promulgated by Treasury Decision ATF–271 published in the **Federal Register** on May 17, 1988 (53 FR 17538).

Section 24.65 Claims for Wine or Spirits Lost or Destroyed in Bond

Two commenters stated that the date for the inventory specified in paragraph (b) should be changed to be consistent with the inventory requirements of § 24.313. This change was made.

Section 24.81 Filing of Formulas

Three commenters suggested revisions to the procedure involved with the filing of formulas for wine. The procedure proposed was the result of an evaluation of the formula submission process in ATF's Industry Compliance Division. The ATF F 5120.29, Formula and Process for Wine, has been revised to clarify the information needed when submitting a formula. Recently, wine industry meetings were held to explain the process of filing of formulas. These meetings resulted in a better understanding of why the formula submission procedures are necessary, e.g., new formulas in lieu of riders to old formulas. Therefore, the formula requirements are adopted as proposed.

Section 24.96 Samples Used Off Premises

Two commenters stated that the requirements to obtain a written statement relative to samples removed from the wine premises causes an unnecessary delay and would create a paperwork burden for the commercial laboratory receiving the samples and the winery sending the samples. The commenters made a valid point and we have removed this requirement. These commenters also wanted the requirement to enter sample removals in records before their removal deleted and we agree such a requirement is not necessary as long as the proprietor maintains a record of such removals.

Section 24.97 Samples Used on the Premises

Two commenters stated the record requirements for wine samples were too burdensome if all samples had to be accounted for. The intent was to require records for samples retained as laboratory specimens and this change was made in paragraph (a). One commenter also suggested that records for tasting be for wine intended for public tasting and not samples for organoleptic tasting. We agree with this comment and the change was made in paragraph (b).

Subpart D—Establishment and Operations

Section 24.102 Taxpaid Wine Premises

A commenter stated that the section on taxpaid wine premises was confusing. We have revised this section for clarity to separate the operations on taxpaid wine premises and taxpaid wine bottling house premises from operations allowed on bonded wine premises. For example, taxpaid United States and foreign wine of the same kind and tax class may be blended on taxpaid wine premises and then bottled on taxpaid wine bottling house premises. However, the blending of United States wine with foreign wine is not allowed on bonded wine premises or taxpaid wine bottling house premises and, similarly, such bottling operation would not be allowed on bonded wine premises or taxpaid wine premises.

Section 24.107 Designation as a Bonded Winery

Two commenters requested that a two year period be specified before the regional director (compliance) could redesignate a bonded winery as a bonded wine cellar. The commenters stated that a proprietor of a bonded winery could have the premises redesignated as a bonded wine cellar because no production operations occurred during the year. Since the section states that the regional director (compliance) may take action and the proprietor could offer reasons to the contrary if such action were contemplated, we do not believe the section should be changed.

Section 24.109 Data for Application

Based on a suggestion by OMB to reduce application information, we have removed the requirement to list equipment in the ATF Form 5120.25 data. The proposed § 24.112, Description of equipment, was removed and the reference to equipment in section 24.131 was also removed.

Section 24.112 Name of Proprietor and Trade Names

This section (proposed § 24.113) covering details on the name of a proprietor and the use of trade names has been revised for clarity as suggested by a commenter. However, the procedure for obtaining a trade name by filing an application has not been changed. We believe the requirement is necessary to determine that the use of a trade name by the proprietor is in conformity with law and regulations.

Section 24.117 Maintenance of Application File

A commenter suggested less detail in the regulation (proposed § 24.118) on how an application file at the premises should be maintained by the proprietor. We have accepted this suggestion since the requirement to keep the application file in complete and current condition, readily available at the wine premises for inspection by ATF officers, is sufficient to meet the data needs during an ATF inspection of the premises.

Section 24.131 Changes in Construction and Use of Buildings and Equipment

Two commenters suggested a notice be filed instead of an application whenever there is to be a change in the construction and use of buildings which would affect the accuracy of the ATF Form 5120.25. We have accepted this suggestion of filing a notice unless the regional director (compliance) requires an immediate amendment.

Section 24.146 Bonds

Two commenters asked that the wine vinegar plant bond paragraph be revised to indicate the bond covers the wine until the wine becomes vinegar. We changed paragraph (c) to include the commenter's request.

Section 24.148 Penal Sum of Bonds

The maximum penal sum of the wine vinegar plant bond was omitted from the proposed regulations in Notice No. 584. The statutory maximum bond of $100,000 has been included in the final rule.

Subpart E—Construction and Equipment

Section 24.167 Tanks

One commenter requested that tanks used for wine storage and for fermentation not be required to have fixed measuring devices. A modification was made to paragraph (a) to require a means of accurately determining the contents of wine tanks. The commenter also asked that the tank calibration tables not be included with the ATF Form 5120.25 application and we accepted this suggestion also. However, the commenter's request that wine spirits addition tanks be exempt from being equipped for locking was not accepted. It is not unusual for wine spirits to be accidentally pumped into wine spirits addition tanks which are empty and in such instances the tanks may need to be locked by the proprietor.

Section 24.168 Identification of Tanks

We revised this section on the identification of tanks to allow more flexibility by the proprietor as suggested by a commenter. We believe that tanks marked with unique serial numbers to be a sufficient requirement and that the requirement of having a means to accurately determine the contents, § 24.167, negates the need for further requiring the tank to be marked with a capacity per inch of depth.

Subpart F—Production of Wine

Section 24.176 Crushing and Fermentation

One commenter asked that the phrase "grape wine only" be removed after malo-lactic bacteria and the requirement that only natural wine of the same fruit may be blended together after fermentation also be removed. While the use of malo-lactic bacteria is more common in grape wine production than in the production of other than grape wine, we agree that malo-lactic bacteria should not be restricted to grape wine only and the change was made. However, section 5382(b)(7) of the IRC states that only natural wine made from the same kind of fruit may be blended together after fermentation and still remain a natural wine, so this provision remains. Another commenter wanted the preparation of a yeast culture to be exempt from the 0.5 percent rehydration limit because modern technology encompasses the production of a yeast starter and must which is then added to wine. The section was revised to allow for this technological advancement. Both commenters also wanted the requirement that wine be recorded and reported as produced in fermenters at the time of inventory removed because of a burden on a proprietor who takes inventory during the crushing season. We agreed with the commenters and have revised the section since recording the fermenting wine as produced at a later time does not pose a jeopardy to the revenue.

Section 24.177 Chaptalization

Six commenters correctly pointed out a conflict in requiring the quantity of sugar used for chaptalization to be included as ameliorating material for fruit and berry wine (other than grape wine) production. The law allows juice from fruit or berries (other than grapes) to be brought up to 25 degrees Brix by the addition of sugar and such sugar is counted as ameliorating material only for grape juice or wine (except for the water if liquid sugar is added to fruit wine). We have revised the section to state that if grape juice or grape wine is ameliorated after chaptalization, the quantity of pure dry sugar added will count as ameliorating material and not count as such for fruit wine.

Section 24.178 Amelioration

Twelve commenters objected strongly to paragraph (b)(3) which would require the acid level and volume of juice from each State be determined for the amelioration computation before such juice was blended together. This proposal was made to reduce the possibility of a proprietor purchasing very high acid grapes for the sole purpose of raising the acid level and thus the amount of ameliorating material that may be added to a lot of wine. The commenters pointed out the economic problems associated with the proposal and the paragraph has been deleted. Four commenters suggested that the statement concerning the amount of ameliorating material to reduce fixed acid may be misleading and could result in a winemaker not considering the fixed acid limit for ameliorating juice or wine. We have added a statement about the fixed acid level limitations in the sentence. Two commenters asked that wine not of their own production be allowed to be ameliorated. Sections 5382, 5383 and 5384 of the IRC will not allow for such a change in regulations.

Section 24.179 Sweetening

One commenter requested the statement "separately or in combination" be added to paragraph (d) to conform the paragraph to existing regulations. This change was made since such language is also consistent with the definition of specially sweetened natural wine in section 5385 of the IRC. The section was also revised to clarify the alcohol and solids limitations for the specific types of sweetened wines.

Section 24.180 Use of Concentrated and Unconcentrated Fruit Juice

One commenter suggested a revision to clarify the status of concentrated fruit juice reduced with water to any degree of Brix above 22 degrees. The section was revised to include this point.

Section 24.182 Use of Acid to Correct Natural Deficiencies

Three commenters correctly pointed out that chaptalized juice should be allowed to have acid added if necessary to correct natural deficiencies. The section was revised to liberalize the use of acid and to allow chaptalized juice to have necessary acid adjustments.

Section 24.184 Use of Volatile Fruit-Flavor Concentrate

Two commenters requested that volatile fruit-flavor concentrate need not be from the same variety of berry or grape in the case of generic wine production. Sections 5382, 5384 and 5385 of the IRC will not allow for such a regulation change.

Subpart H—Production of Special Natural Wine

Section 24.195 General

One commenter suggested all finished special natural wine contain a minimum of 80 percent by volume natural wine as is required for vermouth. We believe such a change in regulations is outside the scope of this rulemaking.

Section 24.197 Production by Fermentation

One commenter objected to the statement that spirits may not be added to special natural wine produced by fermentation except for authorized essences. This requirement is in compliance with Section 5386 of the IRC. However, we revised the section to indicate that spirits may be contained in the natural wine used as a base.

Subpart I—Production of Agricultural Wine

Section 24.204 Other Agricultural Products

One commenter suggested the reference to raisins be changed to dried fruit to be consistent with § 24.202. This suggestion was adopted.

Subpart J—Production of Other Than Standard Wine

Section 24.218 Other Wine

One commenter wanted to allow other than standard wine to be completely neutralized by successive additions of wine spirits and water so that natural flavors would be more effective in the final product. We did not adopt this suggestion because it is doubtful that the final product could be labeled wine since it would not have a basic character derived from the primary winemaking material.

Section 24.219 Spoiled Wine

A commenter suggested that the word "immediately" be removed from the proposed section for spoiled wine. We have decided to delete this section from regulations because a proprietor has to determine the disposition of any wine which has become spoiled. Stating requirements for such disposition serves no useful purpose.

Subpart K—Spirits

Section 24.225 General

Two commenters objected to wine spirits additions only being allowed to be added to natural wine in the State where the natural wine was produced. Section 5382 of the IRC will not allow for the requested regulation change.

Subpart L—Storage, Treatment and Finishing of Wine

Sections 24.241 and 24.242 Decolorizing Wine

Two commenters offered several changes concerning regulations for decolorizing wine. We have revised the sections by liberalizing the requirements to allow decolorizing of wine other than white wine and to further reduce recordkeeping.

Section 24.244 Use of Acid to Stabilize Wine

One commenter suggested we make the section on the use of acid more general. The suggestion was adopted and the section was revised for clarity.

Sections 24.246–24.250 Wine Treating Materials and Processes

In Notice No. 543, ATF sought comments from producers, bottlers and importers of wine and from other interested parties on whether, pursuant to the provisions of Section 5382 of the Internal Revenue Code of 1986, certain materials and processes are acceptable in "good commercial practice" among winemakers in the United States or elsewhere in the production, cellar treatment, and finishing of wine and in the preparation of juice prior to fermentation. ATF also proposed changes in the regulations issued under the provisions of the Federal Alcohol Administration Act pertaining to limitations in the cellar treatment of all wines, domestic and imported. ATF specifically requested public comment regarding possible revisions of the regulations pertaining to:

(1) The use of activated carbon or hydrogen peroxide or an "anthocyanase" enzyme preparation to reduce color in the juice of red and black grapes;

(2) The acceptability in good commercial practice of employing an ultrafiltration process utilizing membranes of various molecular sizes to filter proteinaceous material and color pigments from juice and wine including red wine;

(3) The use of maltol or ethyl maltol to treat standard wine;

(4) A proposal to rescind the listings of the parabens and propylene glycol as authorized treating materials;

(5) The continued use of potassium benzoate to preserve wine;

(6) A proposal to decrease the maximum residual level of sulfur dioxide in wine;

(7) A proposed 3-fold increase in the volume of water used in the preparation of treating material slurries;

(8) The establishment of maximum levels for ethyl acetate and hydrogen sulfide, and higher volatile acidity levels of 0.15 gram per 100 milliliters for white wine and 0.17 gram per 100 milliliters for red wine produced from unameliorated juice having a minimum solids content of 28° Brix;

(9) A proposal that the authorized level of sorbic acid in finished wine be further reduced from 300 to 200 milligrams per liter; and,

(10) A proposal to permit the addition of acid to a level of 9 grams per liter in white wine containing 5 or more grams of sugar per liter.

Sulfur Dioxide. Regulations in 27 CFR 4.22 prescribe a limitation of 350 parts per million (ppm) of sulfite residues, measured as total sulfur dioxide, for wine. This limitation originated in an August 22, 1938, amendment to the first wine labeling regulations issued under the Federal Alcohol Administration Act of 1935. In Notice No. 543, ATF proposed reductions in this limitation by establishing maximum residual levels, measured as total sulfur dioxide, of 125 ppm for "low solids" red wine, 175 ppm for "low solids" white wine, and 275 ppm for all "high solids" wines with 5 grams per 100 milliliters (5.0%) being proposed as the threshold for "high solids" wines. The proposed levels reflected the results of ATF's analyses of yearly "market basket" surveys from 1981 through 1984 of over 2,500 samples of both domestic and imported wines. ATF continues to monitor sulfur dioxide levels in wines by means of analyses of "market basket" and compliance samples.

Thirty-one of the 60 comments to Notice No. 543 addressed the sulfur dioxide proposals; the majority opposed one or more of the levels proposed. On December 19, 1988, the Food and Drug Administration (FDA) published a proposed rule in the **Federal Register** (53 FR 51065) which would affirm, with specific limitations, that certain uses of sulfur dioxide, sodium sulfite, sodium and potassium bisulfite, and sodium and potassium metabisulfite (collectively known as "sulfiting agents" or "sulfites") are generally recognized as safe (GRAS). In this proposal, FDA is considering limiting the amount of sulfiting agents which can be used in various foods in order to lower the average daily intake of sulfites which are consumed with food. FDA wants to lower this level due to the number of sulfite sensitive individuals who are adversely affected by the intake of sulfites. As part of FDA's proposal, they have recommended that the maximum level of total sulfur dioxide in wine be no greater than 275 ppm. This would be a reduction of 75 ppm from the currently authorized maximum level of 350 ppm. ATF has decided to take no further action regarding the maximum permissible level of sulfur dioxide in wine until FDA issues a decision.

Volatile Acidity. Currently, 27 CFR 4.21(a)(1)(iii) limited the maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide to 0.14 gram per 100 cubic centimeters (20 °C) for natural red wine and to 0.12 gram per 100 cubic centimeters (20 °C) for other grape wines. In Notice No. 543, ATF proposed a 0.03 gram per 100 mL increase to 0.15 gm/100 mL in the limitation for volatile acidity in white wine produced from unameliorated juice having total solids of 28 degrees or more Brix. Five of the comments to Notice No. 543 addressed this proposal. All five supported the proposal. However, one commenter pointed out that the proposal should be extended to red wine as well as to white wine. A review of academic texts (e.g., *The Technology of Winemaking*, Amerine, M.A., Berg, H.W., Kunkee, R.E., Ough, C.S., Singleton, V.L., and Webb, A.D., 4th Edition, 1980) pertaining to the biochemistry of yeast fermentation of

naturally high solids musts, i.e., musts of 28 degrees or more Brix, as well as data obtained via inspections of bonded wine cellars at which such wines are produced in the United States, supports a 0.03 gm/100 mL increase in the limitation for volatile acidity for white wines produced from high solids musts of 28 degrees or more Brix. In addition, ATF has found that there are some red wines which are produced from musts of 28 degrees or more Brix. Based on this information, ATF considers wines of this style to be produced in "good commercial practice" and, accordingly, the final rule increases the limitations for volatile acidity in wines of this style by 0.03 gram per 100 milliliters to 0.17 gram per 100 milliliters for red wine and to 0.15 gram per 100 milliliters for all other wines. The regulation in the paragraph immediately following 27 CFR 4.21(a)(1)(iii), pertaining to the maximum volatile acidity level for grape wine, is being amended to reflect these revisions. Conforming changes were also made in § 4.21 to express the limitation in grams per 100 milliliters rather than in grams per 100 cubic centimeters.

Ethyl Acetate and Hydrogen Sulfide. Present regulations in Part 4 do not prescribe limitations for ethyl acetate and hydrogen sulfide. In Notice No. 543, ATF sought comment on whether limitations should be established for these naturally produced chemicals which are considered to be measures of deterioration of wine. Six commenters to Notice No. 543 addressed ATF's proposals to establish maximum levels for ethyl acetate and hydrogen sulfide in the standards of identity prescribed for grape wine in 27 CFR 4.21. The commenters were unanimous in their opposition to the proposal on the basis that commercially produced wines are generally high in quality as compared to most wines of earlier decades and that organoleptic character rather than an arbitrary analytical standard should continue to be the criterion for determining a wine's acceptability. The commenters expressed the opinion that the proposal is inappropriate and unnecessary at this time. In light of the comments received, ATF has decided to withdraw this proposal for the present time. Accordingly, the regulations contain no restrictions on the presence of ethyl acetate and hydrogen sulfide in grape wine.

Potassium Benzoate, Parabens, Propylene Glycol. Potassium benzoate, the parabens, and propylene glycol were previously listed as authorized wine treating materials in 27 CFR 240.1051. In Notice No. 543, ATF proposed the delisting of these three materials based on the comments received in response to an earlier notice, No. 413, which appeared in the **Federal Register** of June 18, 1982 (47 FR 26399). Eight commenters to Notice No. 543 addressed the use of potassium benzoate in the treatment of wine. Four commenters addressed the use of the parabens and propylene glycol, a solvent for the parabens. Two commenters who are suppliers of these chemicals, favored the retention of these materials whereas all other commenters are opposed to the use of parabens and propylene glycol in wine and are either opposed to retention of potassium benzoate or favor its use solely in special natural wines and formula wines. ATF finds that the use of these materials is limited to "other (than standard) wines" formulated with relatively high levels of added sugar and/or sugar syrup and water. ATF finds no evidence of the use of these materials in standard wines. In fact, research into academic texts (e.g., *Table Wines,* Amerine, M.A., and Josyln, M.A., 2nd Edition, 1970) and papers (e.g., "Microbial Inhibition Caused by *p.*-Hydroxybenzoate Esters in Wine," Am. J. Enol. Viticult., Vol. 26, No. 4, 1975) points out that benzoic acid is not an effective preservative in wine and that the parabens organoleptically affect the character of wine.

Accordingly, ATF concludes that the use of these materials is not acceptable in good commercial practice among producers of standard wines. In the final rule, ATF has delisted the use of these materials in the treatment of wine. Potassium and sodium benzoates are being retained solely in the production of other than standard formula wines and in distilling material. The listing in 27 CFR 24.247 shows sodium and potassium salts of benzoic acid for use in preventing fermentation of the sugars in special natural wines being accumulated as distilling material with the same limitation currently prescribed. FDA has approved sodium benzoate in 21 CFR 184.1733 for use as an antimicrobial agent and as a flavoring agent and adjuvant in food at a level not to exceed 0.1 percent. Although there is no similar citation in FDA regulations for potassium benzoate, this material is deemed to be generally recognized as safe (GRAS) per two FDA advisory opinions dated September 22, 1982, and September 8, 1983. The opinion of September 8, 1983, further states that potassium benzoate can be used as a substitute for sodium benzoate for use as an antimicrobial agent.

Maltol and Ethyl Maltol. Six commenters to Notice No. 543 addressed ATF's proposal to remove maltol and ethyl maltol from the list of materials authorized for the treatment of standard wine. Three winemakers and two representatives of the flavor and chemical industries favored retention of both maltol and ethyl maltol; the sixth commenter, a winemaker, favored retention of maltol and ethyl maltol in flavored (formula) wines. In Notice No. 413, published in the June 18, 1982, issue of the **Federal Register** (47 FR 26399), ATF proposed the delisting of maltol and ethyl maltol in all wines. In the preamble to T.D. ATF-182, issued September 24, 1984, ATF again addressed the use of these materials in the treatment of standard wine. Maltol, in 1962, and ethyl maltol, in 1969, gained recognition by ATF as treating materials authorized "to stabilize and to smooth wine." However, in a review of all treating materials authorized prior to 1981, ATF found no specific listings in FDA regulations to support technical effects of these materials other than as "flavoring adjuvants (enhancers)."

One commenter, a supplier of maltol and ethyl maltol, states:

> * * * it would be difficult to deny that maltol and ethyl maltol could, in some way, affect the flavor of wine. However, we understand from winemakers that, as with many other wine treatment materials, any affect of maltol and ethyl maltol in the flavor of wine is secondary to the primary roles as smoothing and stabilizing agents.
>
> * * * (although) we are not aware of the existence of any scientific study supporting the smoothing and stabilizing affects of maltol and ethyl maltol in wine * * * we have indicated our willingness to cooperate with interested parties in the development of such data.

Another commenter, a trade association representing flavor manufacturers in the United States, states that:

> Maltol is found naturally in such materials as roasted malt, large bark, pine needles, coffee, butter, and chickory and that it has also been synthesized for commercial use whereas ethyl maltol is a related synthetic material.
>
> * * * at very low levels of use maltol and ethyl maltol can act as: (1) Chelating agents which tend to prevent haze and to stabilize the taste of the wine, (2) fungus growth inhibitors, or (3) stabilizing and smoothing agents."

By letter dated May 21, 1986, ATF requested that FDA review the acceptability of maltol and ethyl maltol as treatments for wine. ATF specifically inquired whether FDA recognized the technical effects as stated in the comments of the chemical suppliers. By letter dated December 1, 1986, Mr. Gerad L. McCowin, Director of FDA's

Division of Food and Color Additives in the Center for Food Safety and Applied Nutrition, responded that:

> We believe maltol and ethyl maltol are "flavor enhancers," which are defined in § 170.3(o)(11) as substances added to supplement, enhance, or modify the original taste and/or aroma of a food, without imparting a characteristic taste or aroma of its own. Additionally, on the basis of the information that you provided, we believe that these ingredients are "sequestrants", which are defined in § 170.3(o)(26) as substances that combine with polyvalent metal ions to form a soluble metal complex to improve the quality and stability of products. Thus, we recognize that maltol and ethyl maltol may act in this way to stabilize wine. Regarding the use of these ingredients to "smooth" wine, we have no information in our files specifically on the "smoothing effect" of maltol and ethyl maltol and, as you know, this technical effect is not listed in § 170.3.

ATF contacted the winemakers who had submitted comments addressing the proposal to delist maltol and ethyl maltol in order to determine the precise technical effect and the extent of use of these materials in the cellar treatment of wines. The response indicated that the smoothing action consists of masking the acidity and harsh tannic material common to native American *Vitis labrusca* grapes, e.g., Concord, Niagara and Delaware, as well as the acidity common to other fruits and berries from which wine is fermented.

In consideration of FDA's advisory opinion and the response of winemakers using maltol and ethyl maltol, ATF concludes that the use of maltol and ethyl maltol constitutes good commercial practice for wines produced from fruits and berries other than grapes and for grape wines produced from *Vitis labrusca* and interspecific hybrids. ATF is revising the listings of maltol and ethyl maltol as sequestrants to stabilize all standard wines with the exception of wines produced from *Vitis vinifera* grapes. This is more restrictive than what is currently allowed since both maltol and ethyl maltol can currently be used in all standard wines.

Sorbic Acid. In T.D. ATF-182, ATF reduced the limitation for sorbic acid from 0.1 percent by volume (1,000 parts per million) to 300 milligrams per liter (300 parts per million). However, at the time of this action, ATF proposed in Notice No. 543 to reduce the limitation for the use of potassium sorbate or sorbic acid to a residual level of 200 milligrams per liter (200 parts per million), measured as sorbic acid.

Eight commenters to Notice No. 543 addressed ATF's proposal. Five of the commenters opposed, two supported, and one advocated a complete delisting of sorbic acid as an authorized preservative for standard wine. One commenter who initially supported the proposal, subsequently reversed its position and now favors retention of the 300 milligrams per liter limitation. The other commenter supporting the proposal stated that "For most sweetened wines sorbic acid is effective only at levels of 175 to 200 milligrams per liter * * * *. It is essential that the concentration of sorbic acid be maintained in the 180 to 200 milligrams per liter range to provide microbial stability in the sweetened wines and setting the maximum level at 200 ppm will permit an effective level to be used." One commenter favors an increase in the limitation for residual sorbic acid to the previous limitation of 1,000 parts per million. ATF's review of the scientific literature (e.g., "Sorbic Acid as a Wine Preservative—Its Efficacy and Organoleptic Threshold," Tromp, A. and Agenbach, W.A., S. Afr. J. Enol. Vitic., Vol. 2, No. 1, 1981) which address the technical effects of potassium sorbate and sorbic acid indicates that sorbic acid can be detected organoleptically at levels between 240 and 500 milligrams per liter. In addition, some studies have indicated that up to 300 milligrams per liter of sorbic acid were necessary to retard fermentation of musts when added at early stages that correspond to some products on the market in respect to alcohol content and residual sugar levels. In consideration of this information and the comments received, ATF believes that a reduction to 200 milligrams per liter could impose too severe a restriction on wine producers. Accordingly, ATF concludes that no further reduction in the maximum level of sorbic acid which can be contained in finished wine is warranted at this time. The authorized level remains at not more than 300 milligrams of sorbic acid per liter of wine. The limitation on standard wine does not restrict the use of potassium sorbate or sorbic acid in "other (than standard) wine" which is covered by the submission and approval of a formula on ATF F 5120.29. Such wine may be treated with and have levels of sorbic acid remaining therein which exceed 300 parts per million measured as sorbic acid. *Acid Additions to 9 Grams per Liter.* The currently prescribed limitations for organic acid additions to standard natural wine are 8 parts per thousand in grape wine and 7 parts per thousand in all other fruit and berry wines. In Notice No. 543, ATF proposed an increase in the limitation for acid additions from 8 to 9 grams per liter, i.e., parts per thousand, for white (grape) wine having a solids content of 5 or more grams per liter. ATF intended to propose an increase in the limitation for acid additions for wines having high solids of 5 or more grams per 100 milliliters. The language appearing in the notice was erroneous since it proposed a level of 0.5 percent solids (w/v) instead of the intended level of 5 percent solids (w/v). Very few wines have less than 0.5 percent solids. The four commenters who addressed the proposal in Notice No. 543 favored liberalization of the limitation for acid additions to all wines regardless of source, color, or sugar content. Despite the error in printing, ATF finds that there is justification to support as good commercial practice an increase in the limitation for acid additions to grape wine from 8 to 9 parts per thousand and an increase to 11 grams of fixed acid per liter for grape wines having total solids of 8 or more grams per 100 milliliters. The justification is based on the fact that it is not uncommon for grapes to have natural acidity levels of 11 grams per liter or more. For grapes having low levels of natural acidity, acid additions may be necessary to correct natural deficiencies. In addition, organoleptic considerations dictate that dessert wines be balanced with higher levels of organic acid additions in order to satisfy consumers' taste demands. Furthermore, in order to provide uniformity in the regulations for acid additions to "other than grape" fruit juices and wines, ATF is revising 27 CFR § 24.182 to allow up to 9 grams of fixed acid per liter for fruit and berry wines.

Treatments No Longer in Use. One commenter recommended the delisting of urea as a yeast nutrient. ATF sought clarification from the commenter. The commenter's primary reason for this action is the finding that urea is no longer being used in the production of standard wine. ATF's inquiries with wine producers support this comment; accordingly, ATF finds that the use of urea is not considered acceptable in good commercial practice among wine producers and is rescinding the listing of urea as an authorized treatment. ATF also has found that the preference for use of polyvinylpolypyrrolidone over polyvinylpyrrolidone has resulted in the discontinuance of use of the latter material by wine producers. ATF finds that polyvinylpyrrolidone is no longer considered acceptable in good commercial practice among wine producers. Accordingly, the listing of polyvinylpyrrolidone as an authorized treating material is rescinded.

Water-based Slurries. Three commenters to Notice No. 543 addressed the proposed increase from one percent

to three percent by volume in the quantity of water allowed for use in preparing water-based slurries of treatment materials. One commenter opposed and two favored the proposal. One commenter favored a 3-fold increase in the limit since this would obviate the need to prepare both water-based and wine-based solutions for suspension of treating materials. The second commenter who favored the proposal stated that "the present restriction on water usage in the preparation of wine treating materials is unwarranted and, in many cases, is not observed. The 3 percent maximum (for) addition of mixing water permits a realistic use of fining agents and will encourage honest reporting (of) additions." The current 1.0 percent limitation is based on historical use and represents good commercial practice among winemakers to date. For ATF to increase the level above 1.0 percent, wine producers would need to submit a technical justification which would explain in detail why they need an increase in the quantity of water allowed for use in preparing water-based slurries of treatment materials. Lacking such a technical justification, ATF would consider any water increase over 1.0 percent to be a way of stretching the wine. Since neither commenter gave a technical justification in support of a 3-fold increase, ATF concludes that the 1.0 percent by volume limitation continues to be good commercial practice among wine producers. Accordingly, the limitation remains unchanged.

Color Reduction. Under this general heading in Notice No. 543, ATF solicited public comment regarding the continued acceptability in good commercial practice of the previously authorized use of activated carbon and hydrogen peroxide to effect reductions in color of juice and wine. Previous regulations in 27 CFR 240.1051 permitted the use of activated carbon at a level of four pounds per 1,000 gallons of juice and the use of hydrogen peroxide at 500 parts per million to remove color from juice pressed from red and black skinned grapes. Notice No. 413 sought comment regarding the continued use of hydrogen peroxide to decolorize juice. Notice No. 543 solicited public comment regarding the continued use of both activated carbon and hydrogen peroxide for this purpose. Notice No. 543 also sought public comment regarding the acceptability in good commercial practice of two newly-developed treatments to reduce color, one employing an anthocyanase enzyme preparation and the other using a membrane filtration technology called ultrafiltration. Ten comments addressed the use of activated carbon and/or hydrogen peroxide to decolorize the juice of red grapes prior to fermentation. Seven commenters addressed the use of an anthocyanase enzyme preparation. Fourteen commenters addressed the various applications of ultrafiltration technology in the treatment of juice and standard wine.

Activated Carbon/Hydrogen Peroxide. Of the ten comments addressing the use of activated carbon and/or hydrogen peroxide to decolorize the juice of red grapes prior to fermentation, five favored use of activated carbon to decolorize red juice and wine, three opposed use of hydrogen peroxide to decolorize the juice of red grapes, and four favored retention of hydrogen peroxide to decolorize juice.

Two commenters stated that "in color reduction by the addition of hydrogen peroxide to red juices, hydrogen peroxide is a strong oxidizing agent which will add carbonyl groups, convert ketones and aldehydes to acids, break chains, interrupt resonance structures of many phenolic molecules, and give rise to quinoid structures which can quickly polymerize." Another commenter stated that "juice is juice, and removal of the color picked up from the skins in crushing should be an accepted commercial practice. It provides considerable flexibility for the winemaker, of course, but not the least of its advantages is the utilization from an economic standpoint of black grapes which may otherwise be surplused." One commenter stated that "the market has shown a demand for blanc and/or blush wines from red grapes" and asked for authorization to decolorize rose and red wines with activated carbon. Another commenter favoring the use of activated carbon for reduction of color in red wine as well as in the juice of red and black grapes states that hydrogen peroxide is not essential for use in combination with charcoal in juice but would greatly speed the desired effect. The commenter states that this process allows greater utilization of existing acreage of grapes whose color does not suit current market preference for white fruit. One commenter supported the use of activated carbon for the purposes and within the limitations proposed. This commenter, however, feels that the use of hydrogen peroxide is not good commercial practice for the removal of color from the juice of red and black grapes and opposes the proposal for such use. Another commenter favored the addition of hydrogen peroxide to all types of grape juice for the removal of color.

ATF finds that hydrogen peroxide is still being used by a few wineries to remove color from the juice of red and black grapes. Consequently, hydrogen peroxide is not being removed from the list of authorized wine treating materials at the present time. However, ATF continues to have some reservations about the chemical changes resulting from the use of hydrogen peroxide, a strong oxidizing agent, to decolorize juice. Therefore, we plan to address the use of hydrogen peroxide again in a future notice of proposed rulemaking.

ATF finds that the removal or reduction of the color in juice or wine by use of activated carbon continues to be acceptable in good commercial practice among wine producers. Due to the frequent requests to use greater quantities of activated carbon than are currently authorized by regulations, ATF has decided to increase the authorized level of activated carbon to no more than 25 pounds per 1,000 gallons (3.0 g/L) of wine/juice. However, no matter what level of activated carbon is used, up to the maximum limit, the resulting wine must retain its vinous character as well as the necessary level of color in accordance with 27 CFR 24.241.

Anthocyanase. Seven commenters addressed the issue of the use of an anthocyanase enzyme preparation. All seven commented favorably on the use of this material to reduce color in grape juice. However, after reviewing the comments as well as the original petition filed for the use of an anthocyanase enzyme preparation as an authorized treatment for reduction or removal of color in juice, ATF has determined that we need more data from winemakers attesting to the efficacy of this treatment before we can make a decision on whether to approve this material for commercial use. Winemakers may file applications pursuant to the provisions of 27 CFR 24.249 for authorization to experiment with this treatment.

Ultrafiltration. In Notice No. 543, ATF requested specific comments regarding the acceptability in good commercial practice of employing an ultrafiltration process using membranes selective for various molecular sizes to filter proteinaceous material, tannin, and color pigments from juice and wine including red wine.

The four applications of membrane filtration proposed in the notice were:

1. Removal of proteinaceous material from wine employing a 10,000 nominal molecular weight limitation.

2. Reduction of harsh tannic material from white wine produced from white skinned grapes employing a 10,000 nominal molecular weight limitation.

3. Removal of the pink color from blanc de noir wine employing a 1,000 nominal molecular weight limitation.

4. Separation of red wine into low color and high color wine fractions for blending purposes using a 1,000 nominal molecular weight limitation.

Of the fourteen commenters who addressed the issue of ultrafiltration in the treatment of wine, many submitted the same "form letter" response and all favored the proposed applications without restriction, i.e., without imposition of nominal molecular weight limitations. One commenter, a supplier of membrane filtration systems, favors adoption of the use of ultrafiltration technology in the U.S. wine industry. The commenter states that this technology "* * * is a one-step filtration process operating in a range well above the molecular weight of flavors, acids, sugars, alcohol, and water." The commenter also states that the choice of the appropriate membrane filtration technology for various wine applications should be based on the suitability of the wine product in the marketplace. The commenter asked that nominal molecular weight cutoff nomenclature be dropped from the proposal because the use of this nomenclature as a means to classify membrane filtration application is arbitrary and inaccurate. "The use of the 10,000 nominal molecular weight cutoff and the 1,000 nominal molecular weight cutoff standards proposed is based on the product line of another supplier of ultrafiltration technology and has the potential to create restraint of free trade." The commenter states further that the technical reasons for this statement are multifold:

1. No standard method for the characterization of membrane types with respect to molecular weight exclusion has been adopted by the membrane industry;

2. Various markers are used to simulate process streams and there is no uniformity from company to company;

3. Membrane performance on laboratory markers is not a useful predictor of performance on a process stream;

4. Membranes produced by one manufacturer may show similar rejection properties in wine yet have a different nominal molecular weight cutoff rating; and

5. Identically rated membranes may perform differently in the same process stream.

One commenter, writing in support of the proposed applications of ultrafiltration, added that the proposed nominal molecular weight limitations may be unnecessary. The commenter would prefer to see the nominal molecular weight limit replaced with a broader limitation, namely, that ultrafiltration for the proposed purposes be permitted provided the basic character of the wine is unchanged. ATF finds the proposed applications of ultrafiltration with some limitations to be acceptable in good commercial practice. The final rule permits the use of permeable membranes which are selective for molecules greater than 500 and less than 25,000 molecular weight with transmembrane pressures which do not exceed 100 pounds per square inch. Based upon a review of technical specifications supplied by manufacturers and suppliers of this type of technology, ATF believes that these limitations adequately differentiate ultrafiltration from other types of filtration processes.

Reverse Osmosis. In June 1985, ATF received an application to use a process, employing a membrane filter having a nominal molecular weight limitation of 200 to 250, to reduce the ethyl alcohol content of standard wine. ATF determined that this form of processing is "reverse osmosis" (hyperfiltration) rather than ultrafiltration. In ATF Rul. 85–6, ATFQB 1985–2, 59, ATF recognized the use of reverse osmosis in the treatment of standard wine. This technology allows a "feed" of standard wine to be cycled under progressively increasing pressures through a filtration chamber housing membranes which are selective for molecules having nominal molecular weights of less than 500, thereby separating standard wine into a "permeate", a byproduct consisting essentially of alcohol and water, and a "retentate" consisting of wine with reduced levels of alcohol and water. If water is added to wine so treated, the added water shall be derived solely by refluxing of the permeate in a closed continuous system and its volume shall not exceed the volume of water extracted during processing. Processed wine to which is added water other than that originally present in the wine prior to processing is "other (than standard) wine" in accordance with 27 CFR 24.218 and is subject to the formula requirements of 27 CFR 24.211. Since the provisions of ATF Rul. 85–6 are incorporated into 27 CFR 24.248, the ruling becomes obsolete. Since this technology separates alcoholic spirits from a fermented substance, any person who employs this technology meets the definition of a "distiller" prescribed in 26 U.S.C. 5002(a)(4). The permeate is distilled spirits for the purposes of tax liability and qualification and registration of premises and equipment.

Hydrated Aluminosilicates. Prior to the issuance of T.D. ATF–182, the listing of this type of cellar treatment in regulations had been by the brand name "Bentonite" which over many years of use by winemakers had become semigeneric. In T.D. ATF–182, however, ATF had listed the generic term "Aluminosilicates (hydrated), e.g., Bentonite (Wyoming clay) and Kaolin" for use in clarifying wine with the provision that the sodium content of the wine not be increased by such treatment. ATF cited FDA references in 21 CFR 182.2727, 182.2729, 184.1155 (GRAS) and 186.1256 and stipulated in the "Reference or Limitation" column in 27 CFR 240.1051 that a request for a GRAS advisory opinion was pending. In Notice No. 543, ATF proposed no revision of its listing of "aluminosilicates (hydrated)" for use in the treatment of wine. Five comments addressed the use of hydrated aluminosilicates as prescribed in T.D. ATF–182. Two comments were forwarded by a supplier of a mined "hectorite" clay and by a chemical company that has synthesized a hydrated aluminosilicate having a slightly higher molar ratio of alumina and a reduced level of silica than bentonite. Hectorite, formerly listed in ATF regulations by the brand name "Tansul 7 Clay", is a beneficiated California bentonite clay mined in the Hector area of the Mojave Desert. Since both of these materials fit within the generic terminology of "hydrated aluminosilicates," ATF has determined that both are acceptable for use in the treatment of wine or juice. One of the comments received was a December 4, 1984, interim response from FDA regarding ATF's request for an advisory opinion on Bentonite, Kaolin, and on the use of the generic terminology "aluminosilicates (hydrated)" in regulations. In an advisory opinion dated July 26, 1985, FDA informed ATF that the use of Bentonite and Kaolin in wine is considered GRAS and that the listing in T.D. ATF–182 is acceptable with minor revision of the references to FDA regulatory citations. The reference to FDA citations is also revised to include the date of the advisory opinion. Two commenters pointed out that bentonite naturally contains sodiumions and that fining with bentonite at normal levels will increase the sodium content of wine by a minute, yet measurable, amount. One commenter calculated that the addition of one pound of bentonite to 1,000 gallons of wine increases the sodium content by 1.6 parts per million. ATF acknowledges that Bentonite contains very low levels of sodium and

that during processing the residual sodium content of treated wine or juice does increase. However, the increase is so small that we have determined it to be insignificant. Consequently, we have changed the regulations at 27 CFR 24.246, under Aluminosilicates (hydrated), to eliminate the requirement that the sodium content of the wine not be increased by such treatment.

Mechanical Dehydration of Grapes. One commenter expressed the position that ATF should address the issue of subjecting grapes to mechanical processes which partially dehydrate the fruit thereby resulting in higher sugar content prior to crushing and initiation of fermentation. In response to this comment, ATF advised the commenter to file under the experimentation provisions of section 240.1052 (now § 24.249) an application providing specific information regarding the form of processing envisioned. With sufficient technical information, ATF may decide at a future date to authorize the processing pursuant to the provisions of section 24.250 or to issue a notice of proposed rulemaking in order to determine whether such processing is acceptable in "good commercial practice" among wine producers.

Tannin. One commenter favored expansion of the use of tannin to clarify all fruit wine. Although the commenter gave no justification for this revision, ATF has searched wine making texts (e.g., "Fruit and Honey Wines, IN: Alcoholic Beverages," Jarczyk, A. and Wzorek, W., 1977) and has found a technical basis for the addition of tannin to wines produced from fruits other than grapes. ATF concludes that this activity constitutes good commercial practice among wine producers and, accordingly, is revising the listing of tannin to expand its use to clarify all fruit wines. In addition, due to a change in FDA regulations, ATF is adding a limitation on the use of tannin to state that total tannin in juice/wine shall not be increased by more than 150 milligrams per liter by the addition of tannic acid (polygalloylglucose).

Ion Exchange. A commenter suggested a revision of the minimum pH limitation for ion exchange treatment from pH 3.0 to pH 2.5 in order to facilitate the removal of potassium. The commenter stated that "many times it is necessary to go below pH 3.0 to remove potassium." ATF will request comment and technical data regarding the commenter's suggestion to reduce the pH limitation for treatment by ion exchange in a forthcoming notice of proposed rulemaking. With regard to the use of ion exchange to treat wines, ATF notes that the wine industry is free to select the use of hydrogen/potassium ion exchange over the use of sodium/potassium ion exchange due to FDA's recommendation that it would be prudent for the general population to reduce sodium consumption whenever possible. In addition, ATF is adding juice to the list of uses of ion exchange because some types of juice are processed in this manner.

Groupings Based on Technical Effects. One commenter to Notice No. 584 incorporated by reference comments submitted in response to Notice No. 543. The commenter reiterated its perception that the need exists for a grouping of treating materials by technical effects (e.g., stabilizing, clarifying, etc.). ATF maintains that due to the relatively small number of materials used to treat wine in comparison to the materials authorized by FDA for use in other food matrices as well as the "multi-purpose" intended effects of the authorized treatments, it is less confusing to prescribe a listing in alphabetical order than to employ subheadings of technical effects.

Polyvinylpolypyrrolidone. A commenter recommended that the 0.72 gram per liter limitation on the use of polyvinylpolypyrrolidone (PVPP) be increased to 0.8 gram per liter. The commenter states that a 10 percent increase in the limitation would be adequate to facilitate winemakers' use of this material to remove browning precursors and to prevent "pinking" in white wine. ATF has received indications that the use of PVPP to reduce color from wine seems to remove less wine character than other materials of this type. ATF plans to address this issue in a forthcoming notice of proposed rulemaking. However, in regard to this final rule, ATF finds that an increase in the use of PVPP from 0.72 to 0.8 gram per liter is consistent with "good commercial practice." Accordingly, ATF is increasing the limitation to 0.8 gram per liter. In addition, ATF is clarifying in the "Reference or limitation" column in 27 CFR 24.246 that PVPP may be used in a continuous or batch process.

Ammonium Phosphate. Previous regulations in 27 CFR 240.1051 authorized the use of ammonium phosphate as a yeast nutrient in wine production at a maximum level of 1.7 pounds per 1,000 gallons (0.2 grams per liter). In Notice No. 543, ATF did not propose any change in this listing. However, in light of the delisting of urea, a yeast nutrient, and ATF's plans to issue a notice of proposed rulemaking in the near future requesting comments regarding the continued listing of ammonium carbonate, another yeast nutrient, ATF has increased the authorized use of ammonium phosphate in 27 CFR 24.246 to 8.0 pounds per 1,000 gallons (0.96 gram per liter) of wine. This should provide wine makers added flexibility in the use of ammonium phosphate to propagate yeast before and during fermentation.

Yeast Cell Walls/Membranes. In the past, ATF has approved several applications from wineries to experimentally use yeast cell walls/membranes in the treatment of fermenting juice/wine. The purpose of using yeast cell walls/membranes is to prevent "stuck" or sluggish fermentations. Information from wineries using yeast cell walls/membranes, as well as articles in several prominent wine journals (e.g.,"New Developments in Wine Microbiology", Am. J. Enol. Viticult., Vol. 36, No. 1, 1985, and "Inhibition of Alcoholic Fermentation of Grape Must by Fatty Acids Produced by Yeast and Their Elimination by Yeast Ghosts," Appl. Environ. Microbiol., Vol. 47, No. 6, 1984), suggest that yeast cell walls/membranes can be effective in facilitating fermentation. Consequently, ATF is approving the use of yeast cell walls/membranes to facilitate fermentation of juice/wine with the limitation that the amount used shall not exceed 3 pounds per 1,000 gallons (0.36 g/L) of wine or juice. Conforming changes have been made to 27 CFR 24.246 to provide for this use.

Testing for Color in Decolorized Wine. ATF has determined that the AOAC analytical procedure used to determine color in decolorized wine is not readily available to the majority of the wine industry. The AOAC method was adopted in T.D. ATF–83 (46 FR 25610), dated May 8, 1981. Due to this method's limited availability, ATF is reintroducing the old method of determining color by use of the range of color (Lovibond scale in a one-half inch cell). Regulations at 27 CFR 24.241 include the Lovibond method of determining color as an alternative to AOAC Method 11.003–11.004. The reintroduction of the old method of determining color should alleviate the problem that many wineries have experienced in the past due to the AOAC method not being readily available to them.

Defoaming agents. ATF is adding glyceryl monooleate and glyceryl dioleate to the list of defoaming agents in 27 CFR § 24.246 which are authorized for use in wine to control foaming. We are taking this action because these two

defoaming agents were inadvertently left out when we changed from using trade names to generic names to describe the wine treating materials. We have discussed this change with FDA and they have no objections.

Removal of Reference to Standard Wine in 27 CFR 24.248

ATF has changed the section on authorized processes for treating wine to delete references to standard wine. These processes can now be used when treating all types of wine rather than being restricted to only standard wine. The "Reference or limitation" column has been changed to specify that the addition of water other than that originally present in the wine prior to processing will render standard wine "other than standard." ATF has made this change because we see no reason why the use of these processes should be restricted to standard wine only.

Deleted Materials. The following is a summary of the materials deleted from the list of materials authorized for the treatment of wine and juice with a brief explanation of the justification for this action:

Material	Use	Reason(s) for final action
Hydrogen peroxide.	To facilitate secondary fermentation in the production of sparkling wine.	Use at a maximum level of 3 ppm (with no residues) covered by submission and approval of a formula.
Parabens (*n*-alkyl esters of *p* hydroxybenzoic acid; heptyl-, propyl-, and methyl-.	To preserve wine.	Not considered to be acceptable in "good commercial practice" by wine producers.
Polyvinyl-pyrrolidone (PVP).	To clarify wine.	No longer in use by wine producers.
Potassium benzoate.	To preserve wine.	Use in formula wines covered by approval of formula; use authorized in § 24.247 for distilling material.
Propylene glycol.	Solvent for parabens.	No longer needed due to delisting of parabens.
Urea	Yeast nutrient to facilitate fermentation.	No longer in use by wine producers.

Section 24.255 Bottling or packing wine

This section was revised to incorporate the wine container fill tolerances allowed by a recent law change.

Section 24.259 Marks

One commenter asked that this section only apply to cases and bulk containers. We believe the marking requirements should apply to containers larger than four liters and cases for the effective administration of the taxable removals of wine. We did, however, revise the section to require the formula number for special natural wine to apply to only bulk containers as requested by another commenter.

Subpart N–Removal, Return and Receipt of Wine

Sections 24.270–24.277 Taxpaid removals

These sections were rewritten to provide for the collection of wine excise taxes by ATF.

Section 24.273 Exception to filing semi-monthly tax returns

We received only favorable comments relative to allowing small wine proprietors to file and pay their wine excise taxes annually. The quarterly tax return proposed for those paying $500 to $5000 in wine excise taxes per calendar year was deleted due to a tax law revision establishing the time for paying taxes on wine removed under bond for deferred payment of tax. However, a majority of the wine proprietors pay $500 or less per calendar year so this section will be of great benefit to most wine excise taxpayers.

Section 24.283 Transfers in bond reconsignments

One commenter requested the procedures involved in the reconsignment of wine shipped in bond be revised for clarity and this was done.

Section 24.284 Transfers in bond procedure

Two commenters suggested that the consignee sending a copy of the transfer record to the consignor upon receipt of wine in bond was an unnecessary burden. Under Revenue Ruling 70–113, many applications for relief from the requirements for using a Form 703 have been approved without requiring the consignee sending a copy of a transfer record and such procedure has been satisfactory. Therefore, we have accepted the commenters suggestion and deleted the procedure in this section and § 24.281.

Section 24.290 Distilling material

This section has been corrected to conform to Section 5373(a) of the IRC. As proposed, formula wine could be used as distilling material in the production of wine spirits for subsequent use in wine production. Section 5373 states that brandy or wine spirits may only be produced from (1) fresh or dried fruit, or their residues, (2) the wine or wine residues therefrom, or (3) special natural wine under such conditions as the Secretary may by regulations prescribe. Therefore, the only formula wine which could be made into wine spirits is special natural wine.

Subpart O–Records and Reports

A number of comments were received relative to reducing the recordkeeping and reporting burden on the proprietor. These suggestions were adopted whenever possible. Each section was reviewed several times with the objective of reducing even further the recordkeeping and reporting requirements while still allowing for an effective administration of the internal revenue laws and regulations.

Section 24.300 General

A commenter requested that the requirement that 10ths of gallons be recorded be changed to allow the rounding to the nearest gallon on records and reports. We have changed this requirement and the ATF Form 5120.17, Monthly Report of Wine Cellar Operations, instructions will be changed subsequently. One commenter wanted the requirement deleted that data processing programs be available for examination when requested by an ATF officer. We feel this requirement may be necessary when conducting an audit, so no change was made.

Section 24.301 Bulk still wine record

One commenter suggested that paragraph (i) be revised so that only the water added to treating material be included in the record of volume increase since this type of treating material either settles out of the wine or is filtered out of the wine. This change was made.

Section 24.305 Sweetening record

The proposed revision of this section inadvertently omitted the recording of any concentrated or unconcentrated juice used for sweetening. Because the use of juice in sweetening wine will result in an increase in the bulk wine inventory, a record of such use is necessary.

Section 24.308 Bottled or packed wine record

Two commenters stated that the requirement to record the number and size of bottles filled was a burden for many large bottlers. We revised the section to reduce the burden by

requiring such an entry if the information is not available in another record. Two commenters objected to the requirement that the approved Application For and Certificate/ Exemption of Label/Bottle Approval serial number be recorded. We believe some indication of the label used on wine containers should be recorded. We have revised the requirement to allow the proprietor to use any system so long as the label used is reflected in the bottling or packing record.

Section 24.311 Taxpaid wine record

A commenter suggested an increase in the quantity of taxpaid wine sold to a consumer before being required to record the consumer's name and address. Since a retail liquor dealer is not required to record the name and address of a consumer purchasing wine unless such individual sale is more than 20 gallons, we have correspondingly increased the quantity to 80 liters for a wine proprietor. This change was made in § 24.310 also.

Section 24.313 Reconditioned foreign wine record

One commenter expressed concern that under the proposed regulations taxpaid foreign wine could no longer be returned to the bonded wine premises for reconditioning and subsequent removal. We believe the broadened concept of establishing a wine premises eliminates the need to return taxpaid foreign wine to the bonded wine premises for the purpose of reconditioning. Since section 24.102 provides for the reconditioning of taxpaid United States and foreign wine and the taxpaid wine record section, 24.311, covers taxpaid United States and foreign wine reconditioning, the proposed section for foreign wine reconditioning was deleted.

Section 24.315 Materials received and used record (Proposed § 24.316)

One commenter stated that the requirement to record the maximum volume of water to restore one gallon of concentrated juice was not necessary. We agreed and deleted the requirement.

Section 24.320 Chemical record (Proposed § 24.321)

Two commenters stated the proposal did not adopt the exception to recordkeeping requirements provided in 27 CFR 240.918 for sulfur dioxide compounds. Sulfur dioxide compounds were added back as an exception in this section. We also decided to add nitrogen and carbon dioxide as exceptions in the section because these are similar to oxygen and a record of their use would serve no purpose.

Section 24.321 Activated carbon record (Proposed § 24.322)

At the suggestion of commenters the record requirements for the use of decolorizing materials was substantially reduced. We have found that activated carbon and other decolorizing materials do not remove as much vinous character of wine as was once believed. The record requirements have been reduced accordingly. The section heading was also changed from activated carbon record to decolorizing material record.

Obsolete Wine Rulings

The provisions of the following Revenue Rulings and ATF Rulings and Procedures are either incorporated into or are obsoleted by the proposed regulations: Revenue Rulings 54–351, 1954–2 C.B. 462; 54–375, 1954–2 C.B. 559; 54–495, 1954–2 C.B. 522; 55–213, 1955–1 C.B. 596; 55–214, 1955–1 C.B. 597; 55–215, 1955–1 C.B. 599; 55–322, 1955–1 C.B. 596; 55–344, 195–1 C.B. 597; 55–363, 1955–1 C.B. 595; 55–489, 1955–2 C.B. 499; 55–535, 1955–2 C.B. 707; 55–536, 1955–2 C.B. 710; 55–667, 1955–2 C.B. 710; 55–668, 1955–2 C.B. 711; 55–742, 1955–2 C.B. 706; 55–743, 1955–2 C.B. 705; 55–744, 1955–2 C.B. 706; 56–8, 1956–1 C.B. 749; 56–10, 1956–1 C.B. 748; 56–32, 1956–1 C.B. 750; 56–201, 1956–1 C.B. 748; 56–494, 1956–2 C.B. 1044; 56–535, 1956–2 C.B. 1032; 56–536, 1956–2 C.B. 1032; 56–550, 1956–2 C.B. 1042; 57–99, 1957–1 C.B. 609; 57–158, 1957–1 C.B. 561; 57–197, 1957–1 C.B. 607; 57–291, 1957–1 C.B. 608; 57–413, 1957–2 C.B. 965; 57–477, 1957–2 C.B. 966; 57–557, 1957 C.B. 965; 58–87, 1958–1 C.B. 598; 58–597, 1957–2 C.B. 1003; 59–353, 1959–2 C.B. 606; 59–413, 1959–2 C.B. 518; 60–94, 1960–1 C.B. 710; 61–125, 1961–2 C.B. 282; 62–25, 1962–1 C.B. 356; 63–31, 1963–1 C.B. 300; 63–71, 1963–1 C.B. 82; 63–192, 1963–2 C.B. 136; 64–299, 1964–2 C.B. 574; 66–166, 1966–1 C.B. 333; 66–361, 1966–2 C.B. 538; 67–83, 1967–1 C.B. 410; 67–84, 1967–1 C.B. 410; 69–521, 1969–2 C.B. 274; 70–113, 1970–1 C.B. 332; 70–210, 1970–1 C.B. 332; 71–54, 1971–1 C.B. 457; 71–500, 1971–2 C.B. 455; 72–204, 1972–1 C.B. 422; 72–272, 1972–1 C.B. 411; ATF Rulings 72–2, 1972–ATF C.B. 84; 73–4, 1973–ATF C.B. 83; 73–15, 1973–ATF C.B. 78; 74–10, 1974–ATF C.B. 40; 75–2, 1975–ATF C.B. 50; 75–6, 1975–ATF C.B. 38; 75–13, 1975–ATF C.B. 52; 75–19, 1975–ATF C.B. 51; 75–34, 1975–ATF C.B. 49; 76–21, 1976–ATF C.B. 90; 79–12, ATF Quarterly Bulletin 1979–2, 6; 80–14, ATF Quarterly Bulletin 1980–3, 19; 81–9, ATF Quarterly Bulletin 1981–4, 25; 82–1, ATF Quarterly Bulletin 1982–1, 16; and Revenue Procedures 62–34, 1962–2 C.B. 534; 72–30, 1972–1 C.B. 759; and ATF Procedure 74–2, 1974–ATF C.B. 69.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable because this final rule will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control numbers 1512–0058, 0059, 0216, 0292, 0298, 0480, and 0492. (The estimated annual burden per respondent or recordkeeper varies from 0.1 to 2.0 hours, depending on individual circumstances, with an estimated average of 1.0 hour.)

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Public Reports Management Officer, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk

Officer for the Bureau of Alcohol, Tobacco and Firearms.

Drafting Information

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List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 18

Administrative practice and procedure, Authority delegations, Excise taxes, Exports, Labeling, Reporting and recordkeeping requirements, Security measures, Spices and flavorings, Stills, Surety bonds.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation

27 CFR Part 70

Administrative practice and procedure, Authority delegations, Claims, Government employees, Law enforcement, Law enforcement officers.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 231

Administrative practice and procedure, Authority delegations, Labeling, Packaging and containers, Reporting requirements, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Liquors, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

Chapter I of title 27, Code of Federal Regulations is amended as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205

Par. 2. Section 4.10, Meaning of terms, is amended to add a definition for the term "total solids" and reads as follows:

§ 4.10 Meaning of terms.

* * * * *

Total solids. The degrees Brix of the dealcoholized wine restored to its original volume.

* * * * *

Par. 3. Section 4.21 is amended by designating the unnumbered paragraph following (a)(1)(iii) as (a)(1)(iv) and revising it and by revising paragraphs (d)(1)(ii), (e)(1)(ii), (f)(1)(ii) and (h)(2)(ii) to read as follows:

§ 4.21 The standards of identity.

* * * * *

(a) *Class 1; grape wine.* (1) * * *

(iv) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide is 0.14 gram per 100 mL (20° C) for natural red wine and 0.12 gram per 100 mL (20° C) for other grape wine: *Provided,* That the maximum volatile acidity for wine produced from unameliorated juice of 28 or more degrees Brix is 0.17 gram per 100 milliliters for red wine and 0.15 gram per 100 milliliters for white wine. Grape wine deriving its characteristic color or lack of color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as "red wine," "pink (or rose) wine," "amber wine," or "white wine" as the case may be. Any grape wine containing no added grape brandy or alcohol may be further designated as "natural."

* * * * *

(d) *Class 4; citrus wine.* (1) * * *

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for natural citrus wine, more than 0.14 gram, and for other citrus wine, more than 0.12 gram, per 100 milliliters (20° C.).

* * * * *

(e) *Class 5; fruit wine.* (1) * * *

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for natural fruit wine, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 milliliters (20 C.).

* * * * *

(f) *Class 6; wine from other agricultural products.* (1) * * *

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for natural wine of this class, more than 0.14 gram, and for other wine of this class, more than 0.12 gram, per 100 milliliters (20° C.).

* * * * *

(h) *Class 8; imitation and substandard wine.* * * *

(2) * * *

(ii) Any wine for which no maximum volatile acidity is prescribed in §§ 4.20 to 4.25, inclusive, having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.14 gram per 100 milliliters (20° C.).

* * * * *

PART 18—[AMENDED]

Par. 4. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 5001, 5178, 5179, 5203, 5511, 5552, 6065, 7805; 44 U.S.C. 3504(h).

§ 18.11 [Amended]

Par. 5. Section 18.11, Meaning of terms, is amended by replacing the reference "27 CFR part 240" with "27 CFR part 24" in the definition of bonded wine cellar.

PART 19—[AMENDED]

Par. 6. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001–5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5221–5223, 5231, 5232, 5235, 5236, 5241, 5242, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.3 [Amended]

Par. 7. Section 19.3 is amended by removing the reference 27 CFR part 231—Taxpaid Wine Bottling Houses and by replacing the reference "27 CFR part 240—Wine" with "27 CFR part 24—Wine" and placing it in numerical order.

§ 19.241 [Amended]

Par. 8. Section 19.241(a) is amended by replacing the reference "27 CFR part 240" with "27 CFR part 24."

PART 25—[AMENDED]

Par. 9. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5052, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 10. Section 25.81 is amended by revising paragraph (b)(1) to read as follows:

§ 25.81 Alternation of brewery and bonded or taxpaid wine premises.

* * * * *

(b) * * *

(1) ATF F 5120.25 and Form 5130.10 to cover the curtailment and extension of the premises to be alternated.

* * * * *

PART 70—[AMENDED]

Par. 11. The authority citation for Part 70 continues to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5741, 6301, 7601–7606, 7608, 7622, 7623, 7653, 7805.

§ 70.111 [Amended]

Par. 12. Section 70.111 is amended by replacing the reference "part 240" with "part 24" in paragraph (c)(10) and the reference "part 231" with "part 24" in paragraph (c)(11).

§ 70.114 [Amended]

Par. 13. Section 70.114(d)(3) is amended by replacing the reference "part 240" with "part 24."

PART 170—[AMENDED]

Par. 14. The authority citation for Part 170 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5111, 5121, 5171, 5205, 5291, 5301, 5362, 7805; 31 U.S.C. 9304, 9306.

§§ 170.681 through 170.691 [Removed]

Par. 15. 27 CFR part 170 is amended by removing subpart Z consisting of §§ 170.681 through 170.691.

PART 231—[REMOVED]

Par. 16. 27 CFR Part 231—Taxpaid Wine Bottling Houses is removed.

Par. 17. 27 CFR Part 240—Wine is redesignated as 27 CFR Part 24—Wine and revised to read as follows:

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Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Subpart A—Scope

§ 24.1 General.

The regulations in this part relate to the establishment and operation (including incidental activities) of wine premises and to the treatment and classification of wine.

§ 24.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia. (Sec. 201, Pub. L. 85–859, 72 Stat. 1337, as amended (26 U.S.C. 5065))

§ 24.3 Status and operation of existing premises.

Proprietors of a previously approved bonded winery, bonded wine cellar, or taxpaid wine bottling house may continue to operate, pursuant to their prior qualification, after the effective date of this part. All wine premises hereafter established, and changes in existing premises, will be in conformity with the provisions of this part. All operations at a wine premises will be conducted pursuant to the provisions of this part. Each proprietor shall submit to the regional director (compliance), within 90 days after the effective date of this part, a list which describes and gives the original approval date of each previously approved alternate method or procedure, emergency variation from requirements, or exceptions to construction and equipment requirements or methods of operation which the proprietor wishes to continue. Any prior authorization not listed by the proprietor will automatically terminate 90 days after the effective date of this part. Proprietors may continue to operate under previously approved authorizations until the regional director (compliance) advises that the procedure or method of operation is inconsistent with the provisions of this part.

(Approved by the Office of Management and Budget under control number 1512–0292)

§ 24.4 Related regulations.

Regulations related to this part are listed below:

26 CFR Part 301—Procedure and Administration.

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.

27 CFR Part 2—Nonindustrial Use of Distilled Spirits and Wine.

27 CFR Part 4—Labeling and Advertising of Wine.

27 CFR Part 9—American Viticultural Areas.

27 CFR Part 18—Production of Volatile Fruit-Flavor Concentrates.

27 CFR Part 19—Distilled Spirits Plants.

27 CFR Part 30—Gauging Manual.

27 CFR Part 170—Miscellaneous Regulations Relating to Liquor.

27 CFR Part 194—Liquor Dealers.

27 CFR Part 200—Rules of Practice in Permit Proceedings.

27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.

27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.

27 CFR Part 252—Exportation of Liquors.

31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Subpart B—Definitions

§ 24.10 Meaning of terms.

When used in this part and in the forms prescribed under this part, terms will have the meanings ascribed in this section. Words in the plural form also include the singular, and *vice versa*, and words indicating the masculine gender also include the feminine. The terms "includes" and "including" do not exclude items not enumerated which are in the same general class. The definitions in this section do not supersede or affect the requirements of part 4 of this chapter, relative to the labeling of wine under the provisions of the Federal Alcohol Administration Act (49 Stat. 981; 27 U.S.C. 205).

Affiliated persons or firms. When used in connection with "own production", one or more bonded wine premises proprietors associated as members of the same farm cooperative, or any one or more bonded wine premises proprietors affiliated within the meaning of section 117(a)(5) of the Federal Alcohol Administration Act, as amended (49 Stat. 989; 27 U.S.C. 211).

Agricultural wine. Wine made from suitable agricultural products other than the juice of grapes, berries, or other fruits.

Allied products. Commercial fruit products and by-products (including volatile fruit-flavor concentrate) not taxable as wine.

Amelioration. The addition to juice or natural wine before, during, or after fermentation, of either water or pure dry sugar, or a combination of water and pure dry sugar, or liquid sugar or invert sugar syrup, to adjust the acid level.

Area supervisor. The supervisory officer of a Bureau of Alcohol, Tobacco and Firearms (ATF) area office.

Artificially carbonated wine. Effervescent wine artificially charged with carbon dioxide and containing more than 0.392 grams of carbon dioxide per 100 milliliters.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part.

Bonded wine cellar. Premises established under the provisions of this part. For the purposes of this part a wine premises designated a bonded winery is also a bonded wine cellar.

Bonded wine premises. Premises established under the provisions of this part on which operations in untaxpaid wine are authorized to be conducted.

Bonded wine warehouse. Bonded warehouse facilities established under the provisions of this part on wine premises by a warehouse company or other person for the storage of wine and allied products for credit purposes.

Bonded winery. Premises established under the provisions of this part on which wine production operations are conducted and other authorized operations may be conducted.

Bottle. A container four liters or less in capacity, regardless of the material from which it is made, used to store wine or to remove wine from the wine premises.

Bottler. A proprietor of wine premises established under the provisions of this part who fills wine into a bottle.

Brix. The quantity of dissolved solids expressed as grams of sucrose in 100 grams of solution at 60 degrees F. (20 degrees C.) (Percent by weight of sugar).

Bulk container. Any container larger than 60 liters.

Business day. Any day, other than Saturday, Sunday, or a legal holiday. (The term "legal holiday" includes all holidays in the District of Columbia and statewide holidays in a particular State in which a claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed.)

Calendar year. The period which begins January 1 and ends on the following December 31.

Case. Two or more bottles, or one or more containers larger than four liters, enclosed in a box or fastened together by some other method.

Chaptalization (Brix adjustment). The addition of pure dry sugar or concentrated juice of the same kind of fruit to juice before or during

fermentation to develop alcohol by fermentation.

Concentrate plant. An establishment qualified under part 18 of this chapter for the production of volatile fruit-flavor concentrate.

Container. A receptacle, regardless of the material from which it is made, used to store wine or to remove wine from wine premises. (Also see the definition of bulk container for containers larger than 60 liters).

Director. The Director, Bureau of Alcohol, Tobacco and Firearms (ATF), the Department of the Treasury, Washington, D.C.

Director of the service center. A director of an internal revenue service center.

Distilled spirits plant. An establishment qualified under part 19 of this chapter (excluding alcohol fuel plants) for producing, warehousing, or processing of distilled spirits (including denatured spirits), or manufacturing of articles.

Distilling material. Any fermented or other alcoholic substance capable of, or intended for use in, the original distillation or other original processing of spirits.

District director. A district director of internal revenue.

Effervescent wine. A wine containing more than 0.392 grams of carbon dioxide per 100 milliliters.

Electronic fund transfer (EFT). Any transfer of funds effected by a proprietor's financial institution, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this _____ (insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Export or exportation. A severance of goods from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country and will include shipments to any possession of the United States. For the purposes of this part, shipments to the Commonwealth of Puerto Rico and to the territories of the Virgin Islands, American Samoa, and Guam will also be treated as exportations.

Fiduciary. A guardian, trustee, executor, receiver, administrator, conservator, or any person acting in any fiduciary capacity for any person.

Financial institution. A bank or other financial institution, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member financial institutions to effect a transfer of funds for their customers (or other financial institutions) to the Treasury account at the Federal Reserve Bank.

Fold. The ratio of the volume of the fruit must or juice to the volume of the volatile fruit-flavor concentrate produced from the fruit must or juice; for example, one gallon of volatile fruit-flavor concentrate of 100-fold would be the product from 100 gallons of fruit must or juice.

Foreign wine. Wine produced outside the United States.

Formula wine. Special natural wine, agricultural wine, and other than standard wine (except for distilling material and vinegar stock) produced on bonded wine premises under an approved formula.

Fruit wine. Wine made from the juice of sound, ripe fruit (including wine made from berries or wine made from a combination of grapes and other fruits or berries).

Gallon or wine gallon. A United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

Grams per liter. For the purposes of this part, the unit of measure equivalent to the "parts per thousand" unit of measure prescribed in the Internal Revenue Code of 1986, as amended.

Grape wine. Wine made from the juice of sound, ripe grapes.

Heavy bodied blending wine. Wine made from fruit without added sugar, with or without added wine spirits, and conforming to the definition of natural wine in all respects except as to maximum total solids content.

High-proof concentrate. A volatile fruit-flavor concentrate (essence) that has an alcohol content of more than 24 percent by volume and is unfit for beverage use (nonpotable) because of its natural constituents, i.e., without the addition of other substances.

In bond. When used with respect to wine or spirits, "in bond" refers to wine or spirits possessed under bond to secure the payment of the taxes imposed by 26 U.S.C. Chapter 51, and on which such taxes have not been determined. The term includes any wine or spirits on the bonded wine premises or a distilled spirits plant, or in transit between bonded premises (including in the case of wine, bonded wine premises). Additionally, the term refers to wine withdrawn without payment of tax under 26 U.S.C. 5362 and to spirits withdrawn without payment of tax under 26 U.S.C. 5214 (a)(5) or (a)(13) with respect to which relief from liability has not yet occurred.

Invert sugar syrup. A substantially colorless solution of invert sugar which has been prepared by recognized methods of inversion from pure dry sugar and contains not less than 60 percent sugar by weight (60 degrees Brix).

Juice. The unfermented juice (concentrated or unconcentrated) of fruit, berries, grapes, and authorized agricultural products exclusive of pulp, skins, or seeds.

Kind. Kind means the class and type of wine prescribed in this part and in 27 CFR part 4.

Lees. The settlings of wine.

Liquid sugar. A substantially colorless refined sugar and water solution containing not less than the equivalent of 60 percent pure dry sugar by weight (60 degrees Brix).

Liter. A metric unit of capacity equal to 1,000 cubic centimeters at 20 degrees C. or 33.814 United States fluid ounces at 68 degrees F. of alcoholic beverage.

Lot. Wine of the same type. When used with reference to a "lot of wine bottled", lot means the same type of wine bottled or packed on the same date into containers.

Must. Unfermented juice or any mixture of juice, pulp, skins, and seeds prepared from fruit, berries, or grapes.

Natural wine. The product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any cellar treatment authorized by Subparts F and L of this part and containing not more than 21 percent by weight (21 degrees Brix dealcoholized wine) of total solids.

Nonbeverage wine. Wine, or wine products made from wine, rendered unfit for beverage use in accordance with § 24.215.

Own production. When used with reference to wine in a bonded winery, the term means wine produced by fermentation in the same bonded winery, whether or not produced by a predecessor in interest at the bonded winery. The term includes wine produced by fermentation in bonded wineries owned or controlled by the

same or affiliated persons or firms when located within the same State.

Packer. A proprietor of wine premises established under the provisions of this part who fills wine into a container larger than four liters.

Person. An individual, trust, estate, partnership, association, company, or corporation. When used in connection with penalties, seizures, and forfeitures, the term includes an officer or employee of a corporation or a member or employee of a partnership, who as an officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A United States gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietor. The person qualified under this part to operate a wine premises, and includes the term "winemaker" when the context so requires.

Pure dry sugar. Refined sugar 95 percent or more by weight dry, having a dextrose equivalent of not less than 95 percent on a dry basis, and produced from cane, beets, or fruit, or from grain or other sources of starch.

Reconditioning. The conduct of operations, after original bottling or packing, to restore wine to a merchantable condition. The term includes relabeling or recasing operations.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional director (compliance). The principal regional official responsible for administering regulations in this part.

Same kind of fruit. In the case of grapes, all of the species and varieties of grapes. In the case of fruits other than grapes, this term includes all of the several species and varieties of any given kind, except that this will not preclude a more precise identification of the composition of the product for the purpose of its designation.

Secretary. The Secretary of the Treasury or the Secretary's designated delegate.

Sparkling wine or champagne. An effervescent wine containing more than 0.392 gram of carbon dioxide per 100 milliliters of wine resulting solely from the secondary fermentation of the wine within a closed container.

Special natural wine. A product produced from a base of natural wine (including heavy bodied blending wine) to which natural flavorings are added, and made pursuant to an approved formula in accordance with Subpart H of this part.

Specially sweetened natural wine. A product made with a base of natural wine and having a total solids content in excess of 17 percent by weight (17 degrees Brix dealcoholized wine) and an alcohol content of not more than 14 percent by volume.

Spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions or mixtures thereof, from whatever source or by whatever process produced), but not denatured spirits unless specifically stated.

Standard wine. Natural wine, specially sweetened natural wine, special natural wine, and standard agricultural wine, produced in accordance with Subparts F, H, and I of this part.

Still wine. Wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters.

Sugar. Pure dry sugar, liquid sugar, and invert sugar syrup.

Sweetening. The addition of juice, concentrated juice or sugar to wine after the completion of fermentation and before taxpayment.

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

Taxpaid wine. Wine on which the tax imposed by law has been determined, regardless of whether the tax has actually been paid or the payment of tax has been deferred.

Taxpaid wine bottling house. Premises established under the provisions of this part primarily for bottling or packing taxpaid wine.

Taxpaid wine premises. Premises established under the provisions of this part on which taxpaid wine operations other than bottling are authorized to be conducted.

This chapter. Title 27, Code of Federal Regulations, chapter I (27 CFR chapter I).

Total solids. The degrees Brix of unfermented juice or dealcoholized wine.

Treasury Account. The Department of Treasury's General Account at the Federal Reserve Bank of New York.

U.S.C. The United States Code.

United States wine. Wine produced on bonded wine premises in the United States.

Unmerchantable wine. Wine which has been taxpaid, removed from bonded wine premises, and subsequently returned to a bonded wine premises under the provisions of § 24.295 for the purpose of reconditioning, reformulation or destruction.

Vinegar. A wine or wine product not for beverage use produced in accordance with the provisions of this Part and having not less than 4.0 grams (4.0 percent) of volatile acidity (calculated as acetic acid and exclusive of sulfur dioxide) per 100 milliliters of wine.

Volatile fruit-flavor concentrate. Any concentrate produced by any process which includes evaporations from any fruit mash or juice.

Wine. When used without qualification, the term includes every kind (class and type) of product produced on bonded wine premises from fruit, berries, or other suitable agricultural products and containing not more than 24 percent of alcohol by volume. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine. A wine product containing less than one-half of one percent alcohol by volume is not taxable as wine when removed from the bonded wine premises.

Wine premises. Premises established under the provisions of this part on which wine operations or other operations are authorized to be conducted.

Wine spirits. Brandy or wine spirits authorized under 26 U.S.C. 5373 for use in wine production.

Subpart C—Administrative and Miscellaneous Provisions

Authorities of the Director

§ 24.20 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form will be furnished as indicated by the headings on the form and the instructions on or pertaining to the form and as required by this part.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

(c) Requests for forms may be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

§ 24.21 Modified forms.

(a) *General.* The Director may approve the use of a modified form in lieu of the prescribed form required by

this part, when in the judgment of the Director:

(1) Good cause has been shown for the use of the modified form and

(2) The use of the modified form will not result in a net increase in cost to the Government or hinder the effective administration of this part.

Except to adapt tax returns for use with data processing equipment, no proposal for modification of a prescribed form relating to qualification, to the giving of any bond, or to the assessment, payment, or collection of tax will be approved under this section.

(b) *Application.* The proprietor who desires to modify a prescribed form shall submit a written application to the regional director (compliance). The application will state the reasons a modified form is necessary and be accompanied by a copy of the proposed form with typical entries.

(c) *Conditions.* A modified form may not be used until the application has been approved by the Director. Authorization for the use of a modified form is conditioned on compliance with the procedures, conditions, and limitations specified in the approval of the application. The use of a modified form does not relieve the proprietor from any requirement of this part. Authority for use of a modified form may be withdrawn whenever in the judgment of the Director the effective administration of this part is hindered by the continuation of the authority. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control number 1512–0292)

§ 24.22 Alternate method or procedure.

(a) *General.* The proprietor, on specific approval of the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. As used in this section, an alternate method or procedure also includes alternate construction or equipment. No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, will be authorized under this section. The Director may approve an alternate method or procedure, subject to stated conditions, when in the judgment of the Director:

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, will not result in an increase in cost to the Government, and will not hinder the effective administration of this part.

(b) *Application.* The proprietor who desires to employ an alternate method or procedure shall submit a written application to the regional director (compliance) for transmittal to the Director. The application will specifically describe the proposed alternate method or procedure, and will set forth the reasons therefor. Alternate methods or procedures will not be employed until the application is approved by the Director.

(c) *Conditions.* The proprietor shall, during the period of authorization for an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the regional director (compliance), or the Director, the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the authorization. (Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5556))

(Approved by the Office of Management and Budget under control number 1512–0292)

Authorities of the Regional Director (Compliance)

§ 24.25 Emergency variations from requirements.

(a) *General.* The regional director (compliance) may approve construction, equipment, and methods of operation other than as specified in this part, when in the judgment of the regional director (compliance) an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations:

(1) Will afford the security and protection to the revenue intended by the prescribed specifications;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law. The area supervisor may approve temporarily an emergency variation pending approval by the regional director (compliance).

(b) *Application.* The proprietor who desires to employ an emergency variation from requirements shall contact the area supervisor and request temporary approval until a written application is acted upon by the regional director (compliance). The application will be submitted within 24 hours of any temporary approval by the area supervisor and describe the proposed variation and set forth the reasons. Where the emergency threatens life or property, the proprietor may take immediate action to correct the situation without prior notification; however, the proprietor shall promptly contact the area supervisor and file with the regional director (compliance) through the area supervisor a report concerning the emergency and the action taken to correct the situation.

(c) *Conditions.* The proprietor shall, during the period of a variation from requirements granted under this section, comply with the terms of the approved application. A failure to comply in good faith with any procedures, conditions, and limitations will automatically terminate the authority for a variation and the proprietor thereupon shall fully comply with the prescribed requirements of regulations from which the variation was authorized. Authority for any variation may be withdrawn whenever in the judgment of the regional director (compliance) the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the variation. (Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5556))

(Approved by the Office of Management and Budget under control number 1512–0292)

§ 24.26 Authority to approve.

The regional director (compliance) is authorized to approve, except as otherwise provided in this part, all applications, bonds, consents of surety, qualifying documents, claims, and any other documents required by or filed under this part, whether for original establishment, for changes subsequent to establishment, for discontinuance of business, for remission, abatement, credit, or refund of tax, or for any other purpose. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

(Approved by the Office of Management and Budget under control number 1512–0292)

§ 24.27 Segregation of operations.

The regional director (compliance) may require the proprietor to segregate operations within any wine premises established under this part, by partitions or otherwise, to the extent deemed necessary to prevent jeopardy to the revenue, to prevent confusion between operations, to prevent substitution with respect to the several methods of producing effervescent wine, and to prevent the commingling of standard wine with other than standard wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5365))

§ 24.28 Installation of meters, tanks, and other apparatus.

The regional director (compliance) may require the proprietor to install meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue. Any proprietor refusing or neglecting to install a required apparatus will not be permitted to conduct business. (Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 24.29 Claims.

The regional director (compliance) may require the proprietor or other person liable for the tax on wine or spirits to file a claim and to submit evidence of loss in any case where wine or spirits are lost or destroyed. (Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5043, 5370))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.30 Supervision.

The regional director (compliance) may require that operations on wine premises be supervised by any number of ATF officers necessary for the protection of the revenue or for the enforcement of 26 U.S.C. chapter 51 and applicable regulations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5366, 5553))

§ 24.31 Submission of forms and reports.

The regional director (compliance) may require the proprietor to submit to a designated ATF officer copies of prescribed transaction forms, records, reports, or source records used to prepare records, reports or tax returns. (Sec. 201, Pub. L. 85–859, 72 Stat. 1396, as amended (26 U.S.C. 5555))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.32 Records.

The regional director (compliance) may require the proprietor to maintain any record required by this part in a prescribed format or arrangement or otherwise change the method of recordkeeping in any case where the required information is not clearly or accurately reflected. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control number 1512–0298)

Authorities of ATF Officers

§ 24.35 Right of entry and examination.

Under 26 U.S.C. 7601, 7602, and 7606, ATF officers have authority to inspect during normal business hours the records, stocks, and wine premises (including any portion designated as a bonded wine warehouse) of the proprietor to determine compliance with all provisions of the internal revenue laws and regulations. In addition, for the purposes prescribed in 27 CFR 70.22, ATF officers may examine financial records, books of account, and any other books, papers, records, and data relevant to an inquiry. Any denial or interference with any inspection by the proprietor, or by agents or employees of the proprietor, is a violation of 26 U.S.C. 7342 and may be subject to an appropriate penalty. (August 16, 1954, Ch. 736, 68A Stat. 872, as amended, 901, as amended, 903, as amended (26 U.S.C. 5560, 7342, 7601, 7602, 7606))

§ 24.36 Instruments and measuring devices.

All instruments and measuring devices required by this part to be furnished by the proprietor for the purpose of testing and measuring wine, spirits, volatile fruit-flavor concentrate, and materials will be maintained by the proprietor in accurate and readily usable condition. The area supervisor may disapprove the use of any equipment or means of measurement found to be unsuitable for the intended purpose, inaccurate, or not in accordance with regulations. In this case, the proprietor shall promptly provide suitable and accurate equipment or measuring devices. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended (26 U.S.C. 5357, 5366, 5368, 5552))

§ 24.37 Samples for the United States.

ATF officers are authorized to take samples of wine, spirits, volatile fruit-flavor concentrate, or any other material which may be added to wine products, for analysis, testing, etc., free of tax to determine compliance with the provisions of law and regulation. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended, 1392, as amended, 1396, as amended (26 U.S.C. 5362, 5373, 5511, 7510))

Facilities and Assistance

§ 24.40 Gauging and measuring.

ATF officers may require the proprietor to furnish the necessary facilities and assistance to gauge or measure wine or spirits in any container or to examine any apparatus, equipment, container, or material on wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended, 1395, as amended, 1396, as amended (26 U.S.C. 5357, 5366, 5368, 5555))

§ 24.41 Office facilities.

The regional director (compliance) may require the proprietor to furnish temporarily a suitable work area, desk and equipment necessary for the use of ATF officers in performing Government duties whether or not such office space is located at the specific premises where regulated operations occur or at corporate business offices where no regulated activity occurs. Such office facilities will be subject to approval by the regional director (compliance). (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended, 1395, as amended (26 U.S.C. 5357, 5366, 5553, 7805))

Employer Identification Number

§ 24.45 Use on returns.

The employer identification number (as defined at 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number will be shown on each return filed pursuant to the provisions of this part, including amended returns. Failure of the taxpayer to include the employer identification number on any return filed pursuant to the provisions of this part may result in the assertion and collection of the penalty prescribed in 27 CFR 70.105 of this chapter. (Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.46 Application.

(a) An employer identification number will be assigned pursuant to application on Internal Revenue Service (IRS) Form SS–4 filed by the taxpayer. IRS Form SS–4 may be obtained from the director of the service center or from any district director.

(b) An application on IRS Form SS–4 will be made by the taxpayer who, prior to filing the first return, has neither secured nor made application for an employer identification number. An application on IRS Form SS–4 will be filed on or before the seventh day after the date on which the first return is filed.

(c) Each taxpayer shall make application for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a tax return under the provisions of this part. (Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.47 Execution of IRS Form SS–4.

(a) *Preparation.* The application on IRS Form SS–4, together with any supplementary statement, will be prepared in accordance with the form instructions and applicable regulations. The application will be filed with the director of the internal revenue service center as instructed on the Form SS–4.

(b) *Signature.* The application will be signed by:

(1) The individual, if the taxpayer is an individual; or,

(2) The president, vice president, other principal officer, or other person authorized to sign, if the taxpayer is a corporation; or,

(3) A responsible and duly authorized member or officer having knowledge of its affairs, if the taxpayer is a partnership or other unincorporated organization; or,

(4) The fiduciary, if the taxpayer is a trust or estate. (Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

(Approved by the Office of Management and Budget under control number 1512–0492)

Special (Occupational) Taxes

§ 24.50 Payment of special (occupational) tax.

(a) *General.* Every proprietor of a bonded wine premises or a taxpaid wine bottling house shall pay a special (occupational) tax at the rate specified by § 24.51. The tax will be paid on or before the date of commencing business as a bonded wine premises or taxpaid wine bottling house, and thereafter every year on or before July 1. On commencing business, the tax will be computed from the first day of the month in which the liability is incurred, through the following June 30. Thereafter, the tax will be computed for the entire year (July 1 through June 30).

(b) *Each place of business taxable.* Proprietors of a bonded wine premises or a taxpaid wine bottling house incur special (occupational) tax at each place of business in which an occupation subject to special (occupational) tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special (occupational) tax, if the divisions of the premises are otherwise contiguous. A proprietor of a bonded wine premises or a taxpaid wine bottling house does not incur additional special (occupational) tax liability for sales of wine made at a location other than on wine premises described in the application, ATF F 5120.25, if the location where the sales are made is contiguous to the bonded wine premises or the taxpaid wine bottling house in the manner described in this paragraph. (26 U.S.C. 5081, 5142, 5143)

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

§ 24.51 Rates of special (occupational) tax.

(a) *General.* Title 26 U.S.C. 5081(a) (2), (3), and (4) impose a special (occupational) tax of $1,000 per year on every proprietor of a bonded wine premises or a taxpaid wine bottling house.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5081(b) provides for a reduced rate of $500 per year with respect to any proprietor of a bonded wine premises or a taxpaid wine bottling house whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special (occupational) tax imposed by § 24.50 relates) are less than $500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer will be included, not just the gross receipts of the business subject to special (occupational) tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special (occupational) tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words "at least 80 percent" is replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months will be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year will be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3). (26 U.S.C. 448, 5061, 5081)

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

§ 24.52 Exemption from special (occupational) tax.

(a) *General.* The proprietor of a bonded wine premises or a taxpaid wine bottling house will not be required to pay special (occupational) tax as a wholesale dealer or retail dealer on account of the sale, at the bonded wine premises or the taxpaid wine bottling house, or at the principal business office as designated in writing to the regional director (compliance), of wine which, at the time of sale, is stored at the bonded wine premises or taxpaid wine bottling house, or has been removed from the bonded wine premises to a taxpaid wine premises, the operations of which are integrated with the operations of the bonded wine premises and which is adjacent to or in the immediate vicinity of the bonded wine premises. The proprietor may not have more than one place of sale, as to each bonded wine premises or taxpaid wine bottling house, that will be exempt from special (occupational) tax under this section.

(b) *Place of exemption.* Unless the proprietor has claimed the exemption elsewhere, it will be presumed that the exemption is claimed at the bonded wine premises or taxpaid wine bottling house where the wine or spirits are stored. If exemption from payment of special (occupational) tax is to be claimed for sales at the principal business office rather than for sales at the bonded wine premises or taxpaid wine bottling house, the proprietor shall state such intention in the approved application or file a notice in letter form of this intention with the regional director (compliance) of the region in which the bonded wine premises or taxpaid wine bottling house is located. Where the exemption is claimed for a place other than the bonded wine premises or taxpaid wine bottling house, the special (occupational) tax will be paid for any sales made at the bonded

wine premises or taxpaid wine bottling house.

(c) *Exception.* Where the proprietor of a bonded wine premises or a taxpaid wine bottling house has not paid special (occupational) tax as a wholesale dealer and consummates sales of wine to another dealer at the purchaser's place of business through a delivery route sales personnel or otherwise, the proprietor of the bonded wine premises or taxpaid wine bottling house shall be required to pay special (occupational) tax as a wholesale dealer.

(d) *Wholesaler's special (occupational) tax.* A wholesale dealer in liquors who has paid the appropriate special (occupational) tax as provided in part 194 of this chapter will not again be required to pay special (occupational) tax as a wholesale dealer because of sales of wine to wholesale or retail dealers in liquors, or to limited retail dealers, at the purchaser's place of business. (Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5111, 5113, 5142))

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

§ 24.53 Special (occupational) tax returns.

(a) *General.* Special (occupational) tax is paid by filing ATF F 5630.5, Special Tax Registration and Return, with payment of tax, in accordance with the instructions on the form.

(b) *Preparation of ATF F 5630.5.* Unless correctly preprinted on a renewal form, all of the information called for on F 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special (occupational) tax.

(3) The employer identification number (see § 24.45).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown will be the taxpayer's principal place of business (or principal office, in case of a corporate taxpayer).

(5) The class(es) of special (occupational) tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special (occupational) tax. "Owner of the business" includes every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special (occupational) tax for the same period at more than one location or for more than one class of tax shall:

(1) File one special (occupational) tax return, ATF F 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Unless correctly printed on a renewal form, prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF F 5630.5), employer identification number, and period covered by the return. The list will show, by States, the name, address, and tax class of each location for which special (occupational) tax is being paid. The original of the list will be filed with ATF in accordance with instructions on the return, and the copy will be retained at the taxpayer's principal place of business (or principal office, in case of a corporate taxpayer) for the period specified in § 24.300(d).

(d) *Signing of ATF F 5630.5—(1) Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any corporate officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney-in-fact.* If a return is signed by an agent or attorney-in-fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney-in-fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office where the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF F 5630.5 will contain or be verified by a written declaration that the return has been executed under the penalties of perjury. (26 U.S.C. 5142, 6061, 6065, 6151, 7011)

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

§ 24.54 Special (occupational) tax stamps.

(a) *Issuance of special (occupational) tax stamps.* Upon filing a properly executed return on ATF F 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special (occupational) tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 24.53(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in case of a corporate taxpayer).

(b) *Distribution of special (occupational) tax stamps for multiple locations.* On receipt of the special (occupational) tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF F 5630.5. Unless correctly printed on the renewal stamp, the taxpayer shall designate one stamp for each location and shall type or print on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special (occupational) tax stamps.* All stamps denoting payment of special (occupational) tax will be kept available for inspection by ATF officers, at the location for which designated, during business hours. (26 U.S.C. 5146, 6806)

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§ 24.55 Changes in special (occupational) tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF F 5630.5, the proprietor shall file an amended special (occupational) tax return as soon as practicable after the change covering the new corporate or firm name, or trade name. No new special (occupational) tax is required to be paid. The proprietor shall attach the special (occupational) tax stamp for endorsement of the change in name.

(b) *Change in proprietorship—(1) General.* If there is a change in the proprietorship of a bonded wine premises or taxpaid wine bottling house, the successor shall pay a new special

(occupational) tax and obtain the required special (occupational) tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special (occupational) tax was paid, without paying a new special (occupational) tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special (occupational) tax return on ATF F 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special (occupational) tax has been paid and who fails to register the succession is liable for special (occupational) tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors; and

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member;

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special (occupational) tax return covering the new location. The proprietor shall attach the special (occupational) tax stamp or stamps for endorsement of the change in location. No new special (occupational) tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special (occupational) tax and obtain a new special (occupational) tax stamp. (26 U.S.C. 5143, 7011)

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Assessments

§ 24.60 General.

Where the regional director (compliance) determines by examination of records, inventories, or otherwise that the proprietor has incurred liability for the tax on wine, distilled spirits, or special (occupational) tax, and the proprietor does not pay the tax upon notification of the liability, the tax will be assessed. (August 16, 1954, Ch. 736, 68A Stat. 767, as amended (26 U.S.C. 6201))

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§ 24.61 Assessment of tax.

When wine or spirits in bond are lost or destroyed (except wine or spirits on which the tax is not collectible by reason of the provisions of 26 U.S.C. 5008 or 26 U.S.C. 5370, as applicable) and the proprietor or other person liable for the tax on the wine or spirits fails to file a claim when required pursuant to § 24.29 or when the claim is denied, the tax will be assessed. In any case where wine is produced, imported, or received otherwise than as authorized by law, or where wine or spirits are removed, possessed, or knowingly used in violation of applicable law, or volatile fruit-flavor concentrate is sold, transported, or used in violation of law, the tax will be assessed. (Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1323, as amended, 1332, as amended, 1335, as amended, 1381, as amended, 1387, as amended, 1392, as amended (26 U.S.C. 5001, 5008, 5043, 5061, 5370, 5391, 5512))

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§ 24.62 Notice.

If an investigation or an examination of records discloses that liability for the tax on wine or distilled spirits, or special (occupational) tax has been incurred by the proprietor, the regional director (compliance) will notify the proprietor by letter of the basis and the amount of the proposed assessment in order to afford the proprietor an opportunity to submit a protest, with supporting evidence, within 45 days, or to request a conference with regard to the tax liability. However, if collection of the tax liability may be jeopardized by a delay, the regional director (compliance) may take immediate jeopardy assessment action pursuant to 26 U.S.C. 6861. (Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370, 6862))

(Approved by the Office of Management and Budget under control number 1512–0492)

Claims

§ 24.65 Claims for wine or spirits lost or destroyed in bond.

(a) *Claim for remission of tax on spirits.* All claims for remission of tax required by this part, relating to the loss or destruction of spirits in bond, will be filed with the regional director (compliance) within 30 days of discovery of the loss. A claim filed under this paragraph will set forth the following information:

(1) The name, registry number, and location of the distilled spirits plant which produced the spirits;

(2) The serial numbers of the containers from which the spirits were lost, the quantity lost from each, and the total quantity of spirits covered by the claim;

(3) The total amount of tax for which claim is filed;

(4) The date of the loss or destruction (or, if not known, the date of discovery);

(5) The nature and cause (if known) of the loss will be stated specifically and in sufficient detail to disclose all material facts and circumstances surrounding the loss;

(6) If lost in transit, the name of the carrier and the points between which shipped; and

(7) If lost by theft, evidence establishing that the loss did not occur as the result of negligence, connivance, collusion, or fraud on the part of the proprietor, owner, consignor, consignee, bailee or carrier, or the agents or employees of any of them.

(b) *Claim for allowance of loss on wine.* A claim for allowance of loss required by this part, relating to the loss or destruction of wine in bond, will be filed with the regional director (compliance). A claim for allowance of loss for wine lost in transit, by fire or other casualty, or any other extraordinary or unusual losses, including a loss by theft, will be filed immediately. Any other claim for allowance of loss will be attached to and submitted with the ATF F 5120.17, Monthly Report of Wine Cellar Operations, for the month in which the inventory required by § 24.313 is taken or, in the case of discontinuance of the premises or change in proprietorship, to the final monthly report filed. A claim filed under this paragraph will set forth the information required by paragraphs (a)(5) to (a)(7) of this section and, in addition, will set forth the following information:

(1) The original volume of wine which sustained the loss, the tax class, the quantity of wine lost, and the percentage of wine lost;

(2) Where the claim covers losses sustained at bonded wine premises during the tax year, the claimant shall state:

(i) the quantities of wine on hand at the beginning of the tax year, received in

bond during the tax year, and produced during the tax year;

(ii) where the percentage of loss is calculated separately by tax class, the volume of wine by tax class; and

(iii) if effervescent wine is produced, the volume of wine produced by fermentation in bottles, by artificial carbonation, and by bulk processing; and

(3) Claims covering losses of wine during transit in bond will show the volume lost from each container, the serial number, if any, and the volume shipped.

(c) *Claim for abatement, credit or refund.* A claim for abatement of an assessment under § 24.61, or credit or refund of tax which has been paid or determined, will be filed with the regional director (compliance) in accordance with the provisions of this paragraph and the provisions of 27 CFR part 170, subpart E. A claim filed under this paragraph with respect to spirits, wine, or volatile fruit-flavor concentrate, will set forth the applicable information required by paragraphs (a) and (b) of this section. In addition, any claim filed under this paragraph will set forth the following information:

(1) The date of the assessment for which abatement is claimed; and

(2) The name, registry number, and address of the premises where the tax was assessed (or name, address, and title of any other person who was assessed the tax, if the tax was not assessed against the proprietor).

(d) *Indemnification or recompense.* A claim filed under paragraph (a) or (b) of this section will specify whether the claimant has been or will be indemnified or recompensed for the spirits or wine lost and, if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wine, less the tax.

(e) *Supporting documents.* A claim filed under paragraph (a), (b), or (c) of this section will be supported by affidavits of persons having personal knowledge of the loss or destruction. In addition, if filed for tax on wine or spirits lost in transit, the claim will be supported by a copy of the carrier's bill of lading. (Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5008, 5370, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0492)

§ 24.66 Claims on wine returned to bond.

(a) *General.* A claim for credit or refund, or relief from liability, of tax on unmerchantable United States wine returned to bonded wine premises will be filed with the regional director (compliance) within six months after the date of the return of the wine to bond. A single claim may not be filed under this section for a quantity on which credit or refund of tax would be in an amount less than $25. This limitation does not apply with respect to any returned wine on which the six month period for filing a claim will expire.

(b) *Filing.* A claim filed under this section will set forth the following information:

(1) The kind, volume, and tax class of the wine;

(2) As to each tax class, the amount of tax previously paid or determined; and

(3) The date the wine was returned to bond.

(c) *Indemnification or recompense.* A claim filed under this section will specify whether the claimant has been or will be indemnified or recompensed for the wine returned to bond and if so, the amount and nature of indemnity or recompense and the actual value of the wine, less the tax. (Sec. 201., Pub. L. 85–859, 72 Stat. 1332, as amended, 1380, as amended (26 U.S.C. 5044, 5361, 5371))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.67 Other claims.

The requirements with respect to a claim for:

(a) Remission of tax on wine withdrawn without payment of tax under the provisions of § 24.292, and lost in transit to the port of export, vessel or aircraft, foreign-trade zone, customs bonded warehouse, or manufacturing bonded warehouse, as applicable, are contained in 27 CFR part 252.

(b) Refund or credit of any tax imposed on wine or other liquors by 26 U.S.C. chapter 51, part I, subchapter A, on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that the amount was excessive, are contained in 27 CFR part 170, subpart E.

(c) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on wine or other liquors previously withdrawn, which are lost, rendered unmarketable, or condemned by a duly authorized official as the result of

(1) A major disaster,

(2) Fire, flood, casualty, or other disaster, or

(3) Breakage, destruction, or damage (excluding theft) resulting from vandalism or malicious mischief, are found in 27 CFR part 170, subpart O.

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.68 Insurance coverage.

The remission, abatement, refund, credit, or other relief, of taxes on wine or spirits provided for under this part will be allowed only to the extent that the claimant is not indemnified or recompensed for such tax by any valid claim of insurance or otherwise. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5064, 5371))

§ 24.69 Filing of claims.

(a) *Claims.* All claims filed under this part for abatement, refund, credit, or remission of tax will be filed on ATF F 5620.8 (2635). Each claim filed under this part will:

(1) Show the name, address, and title of the claimant;

(2) Be signed by the claimant or the duly authorized agent of the claimant; and

(3) Be executed under the penalties of perjury.

(b) *Supporting documents.* Forms, supporting statements, and any other documents required by this part to be submitted with a claim will be attached to the claim and be considered a part of the claim. The regional director (compliance) may require the submission of additional evidence in support of any claim filed under this part. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5064, 5370))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.70 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. Where a claim for credit of tax is filed, the claimant shall, upon receipt of notification of allowance of credit from the regional director (compliance), make an adjusting entry on the next tax return (or returns) to the extent necessary to exhaust the credit. The claimant shall also make an explanatory statement on each tax return specifically identifying the notification of allowance of credit. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return until ATF has acted on the claim. (Sec. 201, Pub. L. 85–859, 72 Stat. 1332, as amended, 1335, as amended, 1381, as amended, 1395, as amended (26 U.S.C. 5043, 5044, 5061, 5370, 5555))

(Approved by the Office of Management and Budget under control number 1512–0492)

Tax Exempt Wine

§ 24.75 Wine for personal or family use.

(a) *General.* Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

(b) *Quantity.* The aggregate amount of wine that may be produced exempt from tax with respect to any household may not exceed:

(1) 200 gallons per calendar year for a household in which two or more adults reside, or

(2) 100 gallons per calendar year if there is only one adult residing in the household.

(c) *Definition of an adult.* For the purposes of this section, an adult is any individual who is 18 years of age or older. However, if the locality in which the household is located has established by law a greater minimum age at which wine may be sold to individuals, the term "adult" will mean an individual who has attained that age.

(d) *Proprietors of bonded wine premises.* Any adult, defined in § 24.75(c), who operates a bonded wine premises as an individual owner or in partnership with others, may produce wine and remove it from the bonded wine premises free of tax for personal or family use, subject to the limitations in § 24.75(b).

(e) *Limitation.* This exemption should not in any manner be construed as authorizing the production of wine in violation of applicable State or local law. Except as provided in § 24.75(d), this exemption does not otherwise apply to partnerships, corporations, or associations.

(f) *Removal.* Wine produced under this section may be removed from the premises where made for personal or family use including use at organized affairs, exhibitions or competitions, such as homemaker's contests, tastings or judgings, but may not under any circumstances be sold or offered for sale. The proprietor of a bonded wine premises shall pay the tax on any wine removed for personal or family use in excess of the limitations provided in this section and shall also enter all quantities removed for personal or family use on ATF F 5120.17, Monthly Report of Wine Cellar Operations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5042))

(Approved by the Office of Management and Budget under control number 1512–0216)

§ 24.76 Cider.

Cider, when produced solely from the noneffervescent fermentation of apple juice without the use of any preservative method or material, and when produced at a place other than a bonded wine premises and sold or offered for sale as cider, and not as wine or as a substitute for wine, is not subject to the tax on wine, or to the provisions of this part. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5042))

§ 24.77 Experimental wine.

(a) *General.* Any scientific university, college of learning, or institution of scientific research may, without payment of tax, produce, receive, blend, treat, and store wine for experimental or research use, but not for consumption (other than organoleptic tests) or sale, and may receive wine spirits without payment of tax in quantities as may be necessary for the production of wine.

(b) *Qualification.* An institution desiring to conduct experimental wine operations shall make application in letter form to the regional director (compliance). The application will show the name and address of the institution, the nature, extent, and purpose of the operations to be conducted, describe the operations and equipment and the location at which operations will be conducted (including identification of the building or buildings, or portions thereof, to be used), and the security measures to be provided. If wine spirits are to be used, that fact will be stated together with the estimated annual requirements in proof gallons. A secure place of storage under lock will be provided for such spirits and will be described in the application. The applicant shall, when required by the regional director (compliance), furnish as part of the application, additional information as may be necessary to determine whether the application should be approved. Operations may not begin until authorized by the regional director (compliance).

(c) *Procurement of spirits.* Where the approved application provides for the use of wine spirits in experimental wine operations, such spirits may be procured to the extent stated in the approved qualifying application. However, an application will be filed with the regional director (compliance) and authorization obtained for each wine spirits procurement.

(d) *Records.* All approved qualifying documents and applications will be retained in the files of the institution and will be exhibited on request to ATF officers. No reports concerning wine or wine spirits need be filed unless required by the regional director (compliance), but records appropriate to the experiments to be conducted and records documenting the disposition of the wine and wine spirits will be retained and will be made available for inspection by ATF officers. If wine spirits are used, the records will show the quantities of spirits received and used each day.

(e) *Discontinuance.* When an institution discontinues experimental wine operations, all remaining wine or wine spirits will be disposed of either by destruction or shipment to premises authorized to receive wine or wine spirits. A letter application will be filed with the regional director (compliance) and authorization obtained prior to the destruction or shipment of the wine or wine spirits. When the authorized destruction or shipment has been completed, a letter notification will be sent to the regional director (compliance). (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5042))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0293)

Formulas

§ 24.80 General.

The proprietor shall, before production, obtain approval of the formula and process by which special natural wine, agricultural wine, and other than standard wine (except distilling material or vinegar stock) are to be made. The formula will be prepared and filed with the Director on ATF F 5120.29, Formula and Process for Wine, in accordance with the instructions on the form. A nonbeverage wine formula will show the intended use of the finished wine or wine product. Any formula approved under this section will remain in effect until revoked, superseded, or voluntarily surrendered. Except for research, development, and testing, no special natural wine, agricultural wine, or, if required to be covered by an approved formula, wine other than standard wine may be produced prior to approval by the Director of a formula covering each ingredient and process (if the process requires approval) used in the production of the product. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1386, as amended, 1395, as amended (26 U.S.C. 5361, 5367, 5386, 5387, 5555))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.81 Filing of formulas.

The proprietor shall on each formula filed designate all ingredients and, if required, describe each process used to produce the wine. The addition or elimination of ingredients, changes in quantities used, and changes in the process of production, or any other

change in an approved formula, will require the filing of a new ATF F 5120.29. After a change in formula is approved, the original formula will be surrendered to the Director. The proprietor shall serially number each formula, commencing with "1" and continuing thereafter in numerical sequence. Nonbeverage wine formulas will be prefixed with the symbol "NB." The Director or the regional director (compliance) may at any time require the proprietor to file a statement of process in addition to that required by the ATF F 5120.29 or any other data to determine whether the formula should be approved or the approval continued. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.82 Samples.

Except for vinegar, the proprietor shall submit under separate cover at the time of filing any nonbeverage wine formula, a 750 mL sample of the base wine used and a 750 mL sample of the finished wine or wine product. The latter sample will be considered representative of the finished product. Any material change in the flavor or other characteristics of the finished product from that of the approved sample will require the filing of a new formula even though the ingredients may be the same. In addition, the Director or the regional director (compliance) may, at any time, require the proprietor to submit samples of any wine or wine product made in accordance with an approved formula or of any materials used in production. (Sec. 201, Pub. L 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

(Approved by the Office of Management and Budget under control number 1512–0059)

Essences

§ 24.85 Essences.

Essences or extracts (preparations of natural constituents extracted from fruit, herbs, berries, etc.) may be used in the production of any formula wine except agricultural wine. The essences may be produced on wine premises or elsewhere. Where an essence contains spirits, use of the essence may not increase the volume of the wine more than 10 percent nor its alcohol content more than four percent by volume. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

§ 24.86 Essences produced on wine premises.

Wine, taxpaid spirits, or spirits withdrawn tax-free may be used in the production of essences on wine premises. The description of the process for producing the essence may be included as part of a formula for the production of a formula wine or a separate formula may be filed on ATF F5120.29. If a separate formula is filed for the essence, the serial number of the formula by which it is produced will be shown in the ATF F 5120.29 covering the formula wine in which it is to be used. If an essence is to be made in quantities greater than required for individual lots of formula wine, and stored on the premises, a separate formula will be filed for the essence. Essences made on wine premises with wine spirits withdrawn free of tax pursuant to 26 U.S.C. 5214(a)(5) may only be used in the production of a formula wine, and may not be removed from the premises where made. Essences made on wine premises with the use of tax-free spirits withdrawn free of tax pursuant to 26 U.S.C. 5214(a)(13) may only be used in the production of a nonbeverage wine or wine product and may not be removed from the premises where made. The ATF F 5120.29 for the production of an essence is filed in the same manner as for the production of formula wine and a sample of the essence produced will be at least four fluid ounces. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.87 Essences made elsewhere.

Before an essence not made on wine premises may be used in the production of formula wine, the manufacturer of the essence shall obtain approval from the Director. The request for approval will identify the essence by name or number and by the name of the manufacturer, and a sample of at least four fluid ounces of the essence will be submitted. However, a request for approval and submission of a sample is not required if the essence is made pursuant to approval of a formula on ATF F 5530.5, Formula and Process for Nonbeverage Product. Essences made under an approved formula on ATF F 5530.5 will be described on ATF F 5120.29 by showing the name of the manufacturer, the manufacturer's nonbeverage drawback formula number, and the date of approval by the Director. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

Conveyance of Wine or Spirits on Wine Premises

§ 24.90 Taxpaid products.

Taxpaid wine or other taxpaid products may be conveyed across bonded wine premises, but may neither be stored nor allowed to remain on bonded wine premises and will be kept separate from untaxpaid wine or spirits. However, upon payment or determination of the tax, bulk wine may remain on bonded wine premises until the close of the business day following the day the tax was paid or determined, respectively, or the bonded wine premises on which the tank is located may be alternated as taxpaid wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5365))

§ 24.91 Conveyance of untaxpaid wine or spirits.

Untaxpaid wine or spirits may be conveyed between different portions of the same bonded wine premises. Untaxpaid wine or spirits may also be conveyed by uninterrupted transportation over any public thoroughfare, or over a private roadway if the owner or lessee of the roadway agrees, in writing, to allow ATF officers access to the roadway to perform their official duty. The conveyance of wine or spirits as authorized in this section is subject to the following conditions:

(a) The untaxpaid wine or spirits are not stored or allowed to remain on any premises other than bonded wine premises;

(b) The untaxpaid wine or spirits are kept completely separate from taxpaid wine or spirits; and

(c) A description of the means and route of conveyance and of the portions of the bonded wine premises between which wine or spirits will be conveyed, as well as a copy of any agreement furnished by the owner or lessee of a private roadway, have been submitted to and approved by the regional director (compliance). (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended (26 U.S.C 5357, 5365))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.92 Products in customs custody.

Products in customs custody may be conveyed across bonded wine premises subject to the following conditions:

(a) The products are not stored or allowed to remain on bonded wine premises beyond the close of the business day; and

(b) The products in customs custody are kept separate from wine and spirits on bonded wine premises. (Sec. 201,

Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C 5357, 5361, 5365))

Samples

§ 24.95 General.

Wine or wine spirits may be withdrawn free of tax from a bonded wine premises for use by or for the account of the proprietor or the agents of the proprietor, for analysis or testing, organoleptically or otherwise. Wine or wine spirits may be used for testing purposes, and wine may be used for tasting or sampling on bonded wine premises free of tax. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended (26 U.S.C. 5362, 5372, 5373))

§ 24.96 Use off premises.

The proprietor may remove samples of wine or wine spirits free of tax for analysis or testing purposes.

(a) *Size.* The size of each sample may not be more than one liter for each lot of wine or wine spirits to be analyzed or tested unless the regional director (compliance) authorizes a larger quantity.

(b) *Disposition of samples.* Remnants or residues of samples remaining after analysis or testing, and which are not retained as specimens, will be destroyed or returned to bonded wine premises. Free of tax samples or residues may not be consumed or sold.

(c) *Records.* The proprietor shall maintain records of all samples taken for analysis or testing, showing the size of each sample, the kind of wine or wine spirits, date of removal, and the name and address to where sent.

(d) *Labeling of samples.* Each sample taken for analysis or testing will be labeled "Sample for Analysis Only". The label will show the name, address, and registry number of the bonded wine premises, date, and the kind of wine or wine spirits.

(e) *Limitation.* The tax will be collected on any wine or wine spirits withdrawn under this section which are used or disposed of for purposes other than as authorized. When the quantity of wine or wine spirits withdrawn under this section exceeds the amount necessary for the purpose intended the tax will be collected on such excess. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5362, 5367, 5368, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0298 and 1512–0503)

§ 24.97 Use on premises.

(a) *Analysis or testing.* The proprietor may take samples of wine or wine spirits free of tax for analysis or testing on bonded wine premises. The proprietor shall maintain records showing the size, kind of wine or wine spirits, date, and disposition of each sample retained as a laboratory specimen. The label of each sample retained as a laboratory specimen will be marked "Sample for Analysis Only" and will show the kind of wine or wine spirits.

(b) *Tasting.* The proprietor may take samples of wine free of tax for organoleptic tasting on bonded wine premises. If a room or area is set aside for public tasting purposes, a record will be maintained showing the date, quantity and kind of wine transferred to the room or area for tasting.

(c) *Limitation.* The tax will be collected on any wine or wine spirits withdrawn under this section which are used or disposed of for purposes other than as authorized. When the quantity of wine or wine spirits withdrawn under this section exceeds the amount necessary for the purpose intended the tax will be collected on such excess. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5362, 5372))

(Approved by the Office of Management and Budget under control numbers 1512–0298 and 1512–0503)

Subpart D—Establishment and Operations

§ 24.100 General.

Each person desiring to conduct operations in wine production, as specified in § 24.101(b), (other than the production of wine free of tax as provided in §§ 24.75 through 24.77) shall, prior to commencing operations, establish wine premises, make application to the regional director (compliance) as provided in § 24.105, file bond, and receive permission to operate wine premises as provided in this part. After approval, the wine premises will be designated a bonded winery, bonded wine cellar or taxpaid wine bottling house. As provided in § 24.107, the designated bonded winery will be used if production operations are to be conducted. In addition, wine premises may be used, in accordance with the provisions of this part, for the conduct of certain other operations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351, 5352))

(Approved by the Office of Management and Budget under control number 1512–0058)

Premises and Operations

§ 24.101 Bonded wine premises.

(a) *General.* A person desiring to conduct operations involving untaxpaid wine, including the use of spirits in wine production, shall file an application and bond with the regional director (compliance). Further, a warehouse company or other person may, upon obtaining the consent of the proprietor and the surety on the bond and upon filing an application, as provided in § 24.108, with the regional director (compliance) and receiving approval, establish at the wine premises a bonded wine warehouse for the storage of wine and allied products for credit purposes.

(b) *Authorized operations.* Except as provided in this part, no operation may be conducted on bonded wine premises other than those authorized. The following operations are authorized:

(1) The receipt, production, blending, cellar treatment, storage, and bottling or packing of untaxpaid wine;

(2) The use of wine spirits in beverage wine production and the use of spirits in nonbeverage wine production;

(3) The receipt, preparation, use, or removal of fruit, concentrated or unconcentrated fruit juice, or other materials to be used in the production or cellar treatment of wine; and

(4) The preparation, storage, or removal of commercial fruit products and by-products (including volatile fruit-flavor concentrate) not taxable as wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1380, as amended (26 U.S.C. 5351, 5353, 5361))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.102 Premises established for taxpaid wine operations.

A person desiring to bottle or pack taxpaid United States or foreign wine shall file an application as provided in § 24.105 to establish a taxpaid wine bottling house premises. A person desiring to conduct taxpaid United States or foreign wine operations, other than bottling or packing taxpaid wine, at bonded wine premises shall include in their application, as provided in § 24.109, the establishment of taxpaid wine premises.

(a) *Taxpaid wine premises.* Premises on which taxpaid United States or foreign wine may be received and stored, or blended with wine of the same kind and tax class, or reconditioned, and removed.

(b) *Taxpaid wine bottling house premises.* Premises on which taxpaid United States or foreign wine may be received, stored, mixed with wine of the same kind, tax class and country of origin to facilitate handling, reconditioned, bottled or packed, and removed. (Sec. 201, Pub. L. 85–859, 72

Stat. 1378, as amended, 1381, as amended (26 U.S.C. 5352, 5363))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.103 Other operations.

Upon the specific approval of the regional director (compliance), other operations not provided for in this part may be conducted on wine premises. Authority to conduct other operations may be obtained by submitting an application to the regional director (compliance). The application will specifically describe the operation to be conducted and the wine premises and equipment to be used. The regional director (compliance) may make any inquiry necessary to determine whether the conduct of other operations on wine premises would jeopardize the revenue, conflict with wine operations, or be contrary to law. Other operations may not be conducted on wine premises until the application has been approved by the regional director (compliance). Other operations authorized under this section will be conducted in accordance with the conditions, limitations, procedures, and terms stated in the approved application. Authority to conduct other operations may be withdrawn whenever the regional director (compliance) determines the conduct of the other operations on wine premises jeopardizes the revenue, conflicts with wine operations, or is contrary to law. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended (26 U.S.C. 5361, 5363))

(Approved by the Office of Management and Budget under control number 1512–0058)

Application

§ 24.105 General.

A person desiring to establish a bonded winery, bonded wine cellar or taxpaid wine bottling house shall file an application on ATF F 5120.25, Application to Establish and Operate Wine Premises. Approval of ATF F 5120.25 will constitute authorization for the proprietor to operate. The premises may not be used for the conduct of operations under this part unless the proprietor has a valid approved application for the operations. The application will be executed under the penalties of perjury and all written statements, affidavits, and any document incorporated by reference will be considered a part of the application. In any instance where a bond is required to be given or a permit obtained to engage in an operation, the currently approved application will not be valid with respect to that operation if the bond or permit is no longer in effect. In this case, the proprietor shall again file an application and obtain approval before engaging in operations at the wine premises. A new application is not required when a strengthening bond is filed pursuant to § 24.153 or a new bond or superseding bond is filed pursuant to § 24.154. The regional director (compliance) may require the filing of a new or an amended application in any instance where the currently approved application is inadequate or incorrect in any respect. (August 16, 1954, Ch. 736, 68A Stat. 749, as amended (26 U.S.C. 6065); sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1392, as amended (26 U.S.C. 5356, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.106 Basic permit requirements.

Any person intending to engage in the business of producing or blending wine or purchasing wine for resale at wholesale is required under the Federal Alcohol Administration Act, as amended (49 Stat. 978; 27 U.S.C. 203) to obtain a basic permit. A State, a political subdivision of a State, or officers or employees of a State or political subdivision acting in their official capacity are exempted from this requirement. The issuance of a basic permit under the Act is governed by regulations in 27 CFR part 1. Where a basic permit is required to engage in an operation, an application for a basic permit will be filed with the regional director (compliance) at the time of filing an original or amended application on ATF F 5120.25. Operations requiring a basic permit may not be conducted until the basic permit application is approved. No Wine Producer's and Blender's Basic Permit or Wine Blender's Basic Permit is required for a bonded wine cellar established only for the purpose of storing untaxpaid wine even though an approved application, ATF F 5120.25, and bond are required. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.107 Designation as a bonded winery.

Bonded wine premises which will be used for the production of wine or for production processes involving the use of wine will be designated a bonded winery unless the proprietor applies for a bonded wine cellar designation. If the proprietor of a bonded wine premises designated as a bonded winery does not engage in wine production operations, the regional director (compliance) may notify the proprietor that the designation of the premises is changed from a bonded winery to a bonded wine cellar. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.108 Bonded wine warehouse application.

A warehouse company or other person desiring to establish a bonded wine warehouse on bonded wine premises for storing wine or allied products for credit purposes shall file an application, in letter form, with the regional director (compliance). The name and address of the applicant and of the bonded wine premises, and the approximate area and storage capacity (in gallons) of the bonded wine warehouse, will be stated in the application. The application will be accompanied by a signed statement from the proprietor of the bonded wine premises requesting the establishment of the warehouse, and the consent of the surety of the bond for the bonded wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.109 Data for application.

The ATF F 5120.25 is prepared in accordance with the instructions on the form and will include the following, as applicable:

(a) Serial number;

(b) Name and principal business address of the applicant and the address of the wine premises if different from the business address;

(c) Statement of the type of business organization and of each person having an interest in the business, supported by the items of information listed in § 24.110;

(d) Indicate whether the application is for the purpose of establishing a bonded winery, bonded wine cellar, or taxpaid wine bottling house. Also, indicate whether a taxpaid wine premises is to be established if the application is for a bonded winery or bonded wine cellar;

(e) List of the offices, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the applicant's name;

(f) Description of the premises (see § 24.111);

(g) Trade names (see § 24.112);

(h) Description of spirits operations;

(i) With respect to wine premises to which the application relates, a list of the applicant's basic permits and bonds (including those filed with the

application) showing the name of the surety for each bond;

(j) Description of volatile fruit-flavor concentrate operations (see § 24.113); and

(k) If other operations not specifically authorized by this part are to be conducted on wine premises, a description of the operations, a list of the premises, and a statement as to the relationship, if any, of the operation to wine operations on wine premises.

If any of the information required by paragraph (c) of this section is on file with the regional director (compliance) of any ATF region in connection with any other premises operated by the applicant, that information, if accurate and complete, may be incorporated by reference and made a part of the application. In this case, the name, address, and if any, registry number of the premises where the information is filed will be stated in the application.

The applicant shall, when required by the regional director (compliance), furnish as part of the application, additional information as may be necessary to determine whether the application should be approved. If any of the submitted information changes during the pending application, the applicant shall immediately notify the regional director (compliance) of the revised information. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1392, as amended (26 U.S.C. 5356, 5361, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.110 Organizational documents.

The supporting information required by paragraph (c) of § 24.109, includes, as applicable, copies of:

(a) *Corporate documents.* (1) Corporate charter or a certificate of corporate existence or incorporation.

(2) List of the directors and officers, showing their names and addresses.

(3) Certified extracts or digests of minutes of meetings of the board of directors, authorizing certain individuals to sign for the corporation.

(4) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders of stock.

(b) *Articles of partnership.* True copies of the articles of partnership, if any, and of the certificate of partnership or association.

(c) *Statement of interest.* (1) Names and addresses of the 10 persons having the largest ownership or other interest in each of the classes of stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another party. If a corporation is wholly-owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need to be furnished only upon the request of the regional director (compliance).

(2) In the case of an individual owner or partnership, the name and address of each person interested in the wine premises, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section and additional documents which may be required by the regional director (compliance) such as articles of incorporation, bylaws, and any certificate issued by a State authorizing operations will be made available to any ATF officer upon request. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.111 Description of premises.

The application will include a description of each tract of land comprising wine premises. The description will be by directions and distances, in feet and inches (or hundredths of feet), with sufficient particularity to enable ready determination of the bounds of the wine premises. When required by the regional director (compliance), a diagram of the wine premises, drawn to scale, will be furnished. The description will clearly indicate any area of the wine premises to be used as bonded wine premises, used as taxpaid wine premises, or alternated for use as bonded wine premises and taxpaid wine premises. The means employed to afford security and protect the revenue will be described. If required by the regional director (compliance) to segregate operations within the premises, the manner by which the operations are segregated will be described. Each building on wine premises will be described as to size, construction, and use. Buildings on wine premises which will not be used for wine operations will be described only as to size and use. If the wine premises consist of a part of a building, the rooms or floors will be separately described. The activities conducted in the adjoining portions of the building and the means of ingress and egress from the wine premises will be described. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended (26 U.S.C. 5356, 5357, 5365))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.112 Name of proprietor and trade names.

The applicant shall list on the application, ATF F 5120.25, the proprietor's name or the operating trade name, if different than the proprietor's name, and any bottling or packing trade names. However, if a bottling or packing trade name is listed on a basic permit issued to the proprietor under the Federal Alcohol Administration Act (49 Stat 978; 27 U.S.C. 204), that trade name is not required to be listed again on the application. If State or local law requires the registration of a trade name, the applicant shall certify that each trade name listed on the application is so registered. A trade name may not be used prior to approval of the application or issuance of a basic permit covering the use of the name. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.113 Description of volatile fruit-flavor concentrate operations.

Each applicant intending to produce volatile fruit-flavor concentrate shall include on the ATF F 5120.25 application a step-by-step description of the production procedure to be employed. The description will commence with the obtaining of juice from the fruit and continue through each step of the process to removal of volatile fruit-flavor concentrate from the system. If volatile fruit-flavor concentrate containing more than 24 percent alcohol (high-proof concentrates (essences)) is to be produced, the proprietor shall indicate any step in the production procedure at which any spirits may be fit for beverage purposes. The maximum quantity in gallons of fruit most used and volatile fruit-flavor concentrate produced in 24 hours, the maximum and minimum fold, and the maximum percent of alcohol in the volatile fruit-flavor concentrate will be stated for each kind of fruit used. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1392, as amended (26 U.S.C. 5356, 5361, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.114 Registry of stills.

Any still intended for use in the production of volatile fruit-flavor concentrate will be set up on bonded

wine premises. Each still is subject to the provisions of subpart C of part 170 of this chapter and will be registered with the regional director (compliance). The listing of a still in the application, and the approval of the application, will, as provided in 27 CFR 170.55, constitute registration with the regional director (compliance). (Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended, 1379, as amended, 1392, as amended (26 U.S.C. 5179, 5356, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.115 Registry number.

Upon approval of the application, the regional director (compliance) will assign a registry number to the bonded winery, bonded wine cellar, or taxpaid wine bottling house. The registry number will be used in all correspondence and on all documents filed subsequently in connection with the operation of the premises and will be shown where required on labels and markings of containers or cases filled at the wine premises.

(Approved by the Office of Management and Budget under control numbers 1512–0058 and 1512–0503)

§ 24.116 Powers of attorney.

The proprietor shall file with the regional director (compliance) a power of attorney for each person authorized to sign or to act on behalf of the proprietor as an attorney-in-fact. A power of attorney is not required for any person whose authority has been furnished in the application. If not limited in duration, the power of attorney will continue in effect until written notice of revocation is received by the regional director or operations are terminated.

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.117 Maintenance of application file.

The proprietor shall maintain an application file with the information required by § 24.109 in complete and current condition, readily available at the wine premises for inspection by ATF officers. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356, 5367))

(Approved by the Office of Management and Budget under control number 1512–0058)

Changes Subsequent to Original Establishment

§ 24.120 Amended application.

Where there is a change in any of the information included in the current approved application, the proprietor shall, within 30 days of the change (except as otherwise provided in this part), submit an amended application to the regional director (compliance) and set forth the information necessary to make the application file accurate and current. Where the change affects only pages or parts of pages of the current application, as many complete pages as will enable the replacement of the pages affected and maintenance of the file as provided in § 24.117 will be submitted. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.121 Changes affecting permits.

The proprietor shall follow the provisions of 27 CFR part 1 to effect any change pertaining to a permit issued under the Federal Alcohol Administration Act. (49 Stat. 978; 27 U.S.C. 203).

§ 24.122 Change in name of proprietor or trade name.

Where there is to be a change in the name of the proprietor or operating trade name, the proprietor shall file an amended application and, if a basic permit has been issued under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203), an application for amendment of the basic permit. Where there is a change in or addition of a trade name, the proprietor shall file an amended application or, if a basic permit has been issued under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203), an application for amendment of the basic permit. Operations under a new name may not be conducted before approval of the amended application or issuance of an amended permit, as the case may be. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.123 Change in stockholders.

If there is a change in the list of stockholders furnished under the provisions of § 24.110(c)(1), the proprietor may, in lieu of submission within 30 days of the change under the provisions of § 24.120, submit a new list of stockholders annually on May 1, or any other approved date, to the regional director (compliance) which has on file the list of stockholders, provided the sale or transfer of capital stock does not result in a change in the control or management of the business. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.124 Change in corporate officers.

Where there is any change in the list of corporate officers furnished under the provisions of § 24.110(a)(2), the proprietor shall submit, within 30 days of the change, an amended application supported by a new list of corporate officers and a statement of the changes reflected in the new list. Where the proprietor has shown that certain corporate officers listed on the original application have no responsibilities in connection with the operations covered by the application, the regional director (compliance) may waive the requirement for submitting an amended application to cover a change in those corporate officers. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.125 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of wine premises qualified to operate under this part, the outgoing proprietor shall comply with the requirements of § 24.140, and the successor shall, before commencing operations, apply for and obtain any required permits, file any required bonds, and file an application for and receive permission to operate in the same manner as a person qualifying a new wine premises; however, the successor may, in the manner provided in § 24.127, adopt the approved formulas of the outgoing proprietor. Wine, spirits, and winemaking materials may be transferred from an outgoing proprietor to a successor in the manner provided in § 24.145.

(b) *Fiduciary.* A successor to the proprietorship of wine premises who is an administrator, executor, receiver, trustee, assignee, or other fiduciary shall, except as otherwise provided in this section, comply with the provisions of paragraph (a) of this section. However, in lieu of filing a new bond, if a bond is required, the fiduciary may furnish a consent of surety extending the terms of any bonds of the predecessor, and any pertinent information contained in the predecessor's application may be incorporated by reference. In addition, the fiduciary shall furnish a certified copy of the order of the court or other pertinent document showing the appointment as such fiduciary. The effective date of the qualifying documents filed by a fiduciary will be the effective date of the court order, or the date specified for the fiduciary to assume control. If the fiduciary was not appointed by a court, the date of assuming control will coincide with the

effective date of the qualifying documents filed by the fiduciary.

(c) *Exception.* A fiduciary intending to liquidate the business conducted on wine premises, i.e., disposition of any wine and spirits on hand, including use of any cellar treatment necessary to put the wine in merchantable condition, who does not intend to produce wine, or use spirits, or receive wine in bond may be exempted from qualifying as the proprietor of the wine premises upon filing with the regional director (compliance) a statement to that effect, a copy of a foreclosure action, or a copy of the court order directing the liquidation of the business, and, if the wine premises is covered by a bond, a consent of surety wherein the surety and the fiduciary agree to remain liable on the bond. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.126 Change in proprietorship involving a bonded wine warehouse.

Where a bonded wine warehouse has been established on wine premises and it is desired to continue the operation of the bonded wine warehouse subsequent to a change in the proprietorship of the bonded winery or bonded wine cellar, the proprietor of the bonded wine warehouse shall file a letter application, accompanied by an affirming statement from the new proprietor of the bonded winery or bonded wine cellar, requesting the continuation of the bonded wine warehouse and also file evidence of sufficient bond coverage. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.127 Adoption of formulas.

The adoption of approved formulas by a successor proprietor will be in the form of an application, filed with the Director. The application will list the formulas for adoption by formula number, name of product, and date of approval. The application will clearly show that the outgoing proprietor has authorized the successor proprietor's use of the approved formulas. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.128 Continuing partnerships.

If, under the laws of the particular State, the partnership is not terminated upon the death or insolvency of a partner but continues until the dissolution of the partnership is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to operate the wine premises under the prior qualification of the partnership, provided a consent of surety is filed wherein the surety and the surviving partner agree to remain liable on any bond covering the bonded wine premises. A surviving partner who acquires the business on completion of the dissolution of the partnership shall qualify from the date of acquisition, as provided in § 24.125(a). The rule set forth in this section will also apply where there is more than one surviving partner. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.129 Change in location.

Where there is a change in the location of wine premises, the proprietor shall file an amended application and an application for amendment of the basic permit, if any, and if a bond has been filed, either a new bond or a consent of surety. Operation of wine premises may not be commenced at the new location prior to approval of the amended application and issuance of any amended permit. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.130 Change in volatile fruit-flavor concentrate operations.

If the proprietor desires to make any change in the process employed to produce volatile fruit-flavor concentrate and the change affects the accuracy of the description of process included in the application, the proprietor shall file an amended application to include the amended or new process. The new or changed process may not be used prior to approval of the amended application. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1392, as amended (26 U.S.C. 5356, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.131 Change in construction and use of buildings.

Where a change is to be made to buildings located on wine premises, or in the use of any portion of the wine premises, which affects the accuracy of the application, the proprietor shall, before making the change, submit a notice to the regional director (compliance) through the area supervisor. The notice will describe the proposed change in detail. The proprietor shall include the change covered by the notice in the next amended ATF F 5120.25 required to be filed, unless the regional director (compliance) requires immediate amendment. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

Alternation

§ 24.135 Wine premises alternation.

(a) *General.* The proprietor of a bonded winery or bonded wine cellar may alternate all or a portion of wine premises for use as a taxpaid wine bottling house or use as taxpaid wine premises. The proprietor may also alternate the use of adjacent or contiguous premises qualified under 26 U.S.C. chapter 51 (distilled spirits plant, brewery, etc.) for use as wine premises or *vice versa.*

(b) *Qualifying documents.* Where the proprietor desires to alternate bonded wine premises as taxpaid wine bottling house premises or taxpaid wine premises, or other premises qualified under 26 U.S.C. chapter 51, the following qualifying documents will be filed with the regional director (compliance):

(1) A statement on the application ATF F 5120.25 that an alternation of wine premises will occur;

(2) Evidence of existing bond, consent of surety, or a new bond covering the alternation;

(3) A description of how taxpaid wine or spirits, or untaxpaid wine or spirits will be identified and segregated; and

(4) Any other document or additional information the regional director (compliance) may require.

(c) *Alternation.* After the necessary qualifying documents have been approved by the regional director (compliance), the proprietor may alternate wine premises as described in the application. Any portion of wine premises on which taxpaid wine is located will be considered taxpaid wine premises or taxpaid wine bottling house premises and any portion of the premises on which wine not identified as taxpaid is located will be considered bonded wine premises. The proprietor shall, prior to the initial alternation of the premises, identify by portable signs or tags, or by any other method or manner satisfactory to the regional director (compliance), either all taxpaid wine on taxpaid wine premises or taxpaid wine bottling house premises or all untaxpaid wine on bonded wine premises.

(d) *Segregation.* The proprietor shall keep untaxpaid wine or spirits

physically separated from taxpaid wine or spirits and on the designated premises. This separation will be by use of tanks, rooms, buildings, partitions, pallet stacks, or complete physical separation, or by any other method or manner which will clearly and readily distinguish untaxpaid wine or spirits from taxpaid wine or spirits and is satisfactory to the regional director (compliance). Where necessary for the protection of the revenue or enforcement of 26 U.S.C. chapter 51, the regional director (compliance) may require that the portions of wine premises alternated under this section be separated by partitions or otherwise.

(e) *Conditions.* Authority for the alternation of bonded wine premises, taxpaid wine bottling house premises, taxpaid wine premises, or other premises qualified under 26 U.S.C chapter 51 is conditioned on compliance by the proprietor with the provisions of this section. Authority for the alternation of bonded wine premises, taxpaid wine bottling house premises, taxpaid wine premises, or other premises qualified under 26 U.S.C. chapter 51 may be withdrawn whenever in the judgment of the regional director (compliance) the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the authorization. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5356, 5357, 5361, 5363, 5365, 5367))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.136 Procedure for alternating proprietors.

(a) *General.* Wine premises, or parts thereof, may be operated alternately by proprietors who have each filed and received approval of the necessary applications and bonds and have qualified under the provisions of this part. Where operations by alternating proprietors are limited to parts of the wine premises, the application will describe areas, buildings, floors, or rooms which will be alternated and will be accompanied by a diagram delineating the parts of the wine premises to be alternated. A separate diagram will be submitted to depict each arrangement under which the wine premises will be operated. Once the qualifying documents have been approved, and operations initiated, the wine premises, or parts thereof, may be alternated. Any transfer of wine, spirits, or other accountable materials from one proprietor to the other proprietor will be indicated in the records and reports of each proprietor. Operation of a bonded winery engaged in the production of wine by an alternate proprietor will be at least one calendar day in length.

(b) *Alternation.* All operations in any area, building, floor, or room to be alternated will be completely finished and all wine, spirits, and other accountable materials will be removed from the alternated wine premises or transferred to the incoming proprietor. However, wine, spirits, and other accountable materials may be retained in locked tanks at wine premises to be alternated and remain in the custody of the outgoing proprietor.

(c) *Bonds.* The outgoing proprietor who has filed bond and intends to resume operation of the alternated areas, buildings, floors, or rooms following suspension of operations by an alternating proprietor shall execute a consent of surety to continue in effect all bonds. Where wine, spirits, or other accountable materials subject to tax under 26 U.S.C. chapter 51 are to be retained in tanks on the wine premises to be alternated, the outgoing proprietor shall also execute a consent of surety to continue the liability of all bonds for the tax on the materials, notwithstanding the change in proprietorship.

(d) *Records.* Each proprietor shall maintain separate records and submit a separate ATF F 5120.17, Monthly Report of Bonded Wine Cellar Operations. All transfers of wine, spirits, and other accountable materials will be reflected in the records of each proprietor. Each proprietor shall maintain a record showing the name and registry number of the incoming or outgoing proprietor, the effective date and hour of alternation, and the quantity in gallons and the percent alcohol by volume or proof of any wine, spirits, or other accountable materials transferred or received. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1380, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5351, 5352, 5354, 5356, 5361, 5362, 5363, 5367, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0058, 1512–0216 and 1512–0298)

§ 24.137 Alternate use of the wine premises for customs purposes.

(a) *General.* The wine premises may be alternated as a Customs Bonded Warehouse under applicable customs laws and regulations, for the purpose of measuring, gauging, and bottling or packing wine. The use of the portion of the wine premises alternated as a Customs Bonded Warehouse is subject to the approval of the district director of customs and the regional director (compliance). When it is necessary to convey wine in customs custody across bonded wine premises, the proprietor shall comply with the provisions of § 24.86.

(b) *Qualifying documents.* Where the proprietor desires to alternate a portion of wine premises for customs use, the following qualifying documents will be filed with the regional director (compliance):

(1) ATF F 5120.25 to cover the alternation;

(2) A diagram clearly depicting any area, building, floor, room or major equipment in use during the alternation; and

(3) Any other documents or additional information the regional director (compliance) may require.

(c) *Alternation.* After approval of the qualifying documents by the regional director (compliance), the proprietor may alternate the wine premises. Portions of the wine premises to be excluded by curtailment or included by extension may not be used for purposes other than those authorized. Prior to the effective date and hour of the alternation, the proprietor shall remove all wine and spirits from the portion of the wine premises to be alternated for customs purposes. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5356, 5357, 5361, 5365, 5367))

(Approved by the Office of Management and Budget under control number 1512–0058)

Permanent Discontinuance of Operations

§ 24.140 Notice.

(a) *General.* Where all or part of the operations at a wine premises are to be permanently discontinued, the proprietor shall file with the regional director (compliance) a notice in letter form to cover the discontinuance. The proprietor shall state in the notice the date on which operations will be discontinued and, if the wine premises are to be transferred to a successor proprietor, the name of the successor proprietor. Any basic permit issued to the proprietor under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203) for the operation discontinued will be submitted to the regional director (compliance) with a written request for cancellation.

(b) *Bonded wine premises.* The proprietor shall certify in the notice, as applicable, that:

(1) All wine, spirits, or volatile fruit-flavor concentrate have been lawfully removed from bonded wine premises, destroyed, or transferred to a successor as of the effective date of discontinuance,

(2) No wine, spirits, or volatile fruit-flavor concentrate are in transit to bonded wine premises, and

(3) All approved applications covering the transfer of spirits to bonded wine premises have been returned to the regional director (compliance).

The proprietor shall submit a report marked "Final" on the ATF F 5120.17, Monthly Report of Wine Cellar Operations. Any wine, spirits, or volatile fruit-flavor concentrate transferred to a successor will be identified as "Transferred to successor" on the report and identified as "Received from predecessor" on the initial report filed by the successor.

(c) *Taxpaid wine bottling house premises or Taxpaid wine premises.* The proprietor shall certify in the notice that all taxpaid United States or foreign wine on hand have been disposed of, or if not yet disposed of, the manner of disposition and the time period in which the disposition will occur. The proprietor shall include taxpaid United States wine on the ATF F 5120.17 report marked "Final." Any United States taxpaid wine transferred to a successor will be identified as "Transferred to successor" on the report and identified as "Received from predecessor" on the initial report filed by the successor. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control numbers 1512–0058 and 1512–0216)

§ 24.141 Bonded wine warehouse.

Where all operations at a bonded wine warehouse are to be permanently discontinued, the warehouse proprietor shall file with the regional director (compliance) a notice in letter form to cover the discontinuance. The warehouse proprietor shall state in the notice the name, registry number, and address of the wine premises on which the warehouse facilities are located and the date on which operations of the bonded wine warehouse will be discontinued. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

(Approved by the Office of Management and Budget under control number 1512–0292)

Bonds and Consents of Surety

§ 24.145 General requirements.

Each person required to file a bond or consent of surety under this part shall prepare and execute the bond or consent of surety on the form prescribed in accordance with this part and the instructions printed on the form, and shall submit the form to the regional director (compliance). A person may not commence or continue any business or operation relating to wine until all bonds and consents of surety required under this part with respect to the business or operation have been approved by the regional director (compliance). (Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.146 Bonds.

(a) *Wine bond.* The proprietor shall give bond on ATF F 5120.36, Wine Bond, to cover the liability for excise taxes imposed by the Internal Revenue Code of 1986, on wines produced or received by the proprietor. This includes liability for special occupational taxes and penalties and interest. The bond will apply to wine, spirits, and volatile fruit-flavor concentrate, or other commodities subject to tax under 26 U.S.C. chapter 51, in transit to or on bonded wine premises, and to the operations of the bonded wine premises, whether the transaction or operation on which the proprietor's liability is based occurred on or off the proprietor's premises. The bond will provide that the proprietor shall faithfully comply with all provisions of law and regulation relating to activities covered by the bond. This bond has a tax obligation limit of $500 for wine removed from bonded wine premises on which the tax has been determined, but not paid.

(b) *Tax deferral bond.* Where the proprietor removes wine from bonded wine premises for consumption or sale, after determination and before payment of tax, and the tax unpaid at any one time amounts to more than $500, the proprietor shall, in addition to any other bond required by this part, furnish a tax deferral bond on ATF F 5120.36, Wine Bond, to ensure payment of the tax on the wine. The tax deferral bond and the wine bond may be submitted on the same ATF F 5120.36.

(c) *Wine vinegar plant bond.* The proprietor of a wine vinegar plant who withdraws wine from a bonded wine premises without payment of tax for use in the manufacture of vinegar shall file a bond on ATF F 5510.2, Bond Covering Removal to and Use of Wine at Vinegar Plant, to ensure the payment of the tax on the wine until such wine becomes vinegar. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.147 Operations bond or unit bond.

Notwithstanding the provisions of § 24.146, each person intending to commence or to continue business as the proprietor of a bonded wine premises with an adjacent or contiguous distilled spirits plant qualified under 27 CFR part 19 for the production of distilled spirits shall, in lieu of a winery bond and the bonds required under the provisions of 26 U.S.C. 5173, as amended, give an operations bond or unit bond in accordance with the applicable provisions of 27 CFR part 19. (Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.148 Penal sums of bonds.

The penal sums of bonds prescribed in this part are as follows:

Bond	Basis	Penal sum minimum/ maximum
Wine Bond. ATF F 5120.36	(1) Not less than the tax on all wine or spirits possessed, in transit, or unaccounted for at any one time.	$1,000/$50,000
	(2) Where the liability in (a)(1) of this section exceeds $250,000	100,000
	(3) Where the unpaid tax amounts to more than $500, not less than the amount of tax which, at any one time, has been determined but not paid.	500/250,000
Wine vinegar plant bond.[1] ATF F 5510.2	Not less than the tax on all wine on hand, in transit, or unaccounted for at any one time.	1,000/100,000

[1] The proprietor of a bonded wine premises who operates an adjacent or contiguous wine vinegar plant with a Wine Bond which does not cover the operation may file a consent of surety to extend the terms of the Wine Bond in lieu of filing a wine vinegar plant bond. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

§ 24.149 Corporate surety.

(a) Surety bonds required by this part may be obtained only from corporate sureties which hold certificates of authority from and are subject to the limitations prescribed by the Secretary as set forth in the current revision of Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies).

(b) Treasury Department Circular No. 570 is published in the **Federal Register** yearly on the first working day in July. As revisions of the circular occur, the revisions are published in the **Federal Register**. Copies may be obtained from the Audit Staff, Financial Management Service, Department of the Treasury, Washington, DC 20226. (July 30, 1947, Ch. 390, Pub. L. 80–280, 61 Stat. 648, as amended (6 U.S.C. 6, 7))

§ 24.150 Powers of attorney.

Each bond, and each consent to changes in the terms of a bond, will be accompanied by a power of attorney whereby the surety authorizes the agent or officer who executed the bond or consent to act on behalf of the surety. The regional director (compliance) may require additional evidence of the authority of the agent or officer of the surety to execute the bond or consent. The power of attorney will be prepared on a form provided by the surety and executed under the corporate seal of the surety. If the power of attorney is other than a manually signed original, the regional director (compliance) may require a certification of validity. (July 30, 1947, Ch. 390, Pub. L. 80–280, 61 Stat. 648, as amended (26 U.S.C. 6, 7))

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§ 24.151 Deposit of collateral security.

(a) Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited as collateral security in lieu of corporate sureties in accordance with the provisions of Treasury Department Circular No. 154 (31 CFR part 225, Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds). Cash, postal money orders, certified checks, cashiers' checks, or treasurers' checks may also be furnished as collateral security in lieu of corporate sureties.

(b) Treasury Department Circular No. 154 is periodically revised and contains the provisions of 31 CFR part 225 and the forms prescribed in 31 CFR part 225. Copies of the circular may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226. (July 30, 1947, Ch. 390, 61 Stat. 650 (6 U.S.C. 15); August 16, 1954, Ch. 736, 68A Stat. 847, as amended (26 U.S.C. 7101))

§ 24.152 Consents of surety.

Consents of surety to changes in the terms of bonds will be executed on Form 1533 by the principal and by the surety with the same formality and evidence of authority as is required for the execution of bonds.

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§ 24.153 Strengthening bonds.

In any instance where the penal sum of the bond on file becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum or give a new bond covering the entire liability. Strengthening bonds will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of either bond to less than its full penal sum. Strengthening bonds will show the current date of execution and the effective date. (Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

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§ 24.154 New or superseding bonds.

When, in the opinion of the regional director (compliance), the interests of the Government demand it, or in any case where the validity of the bond becomes impaired in whole or in part for any reason, the principal will be required to give a new bond. A new bond will be required immediately in the case of the insolvency of a corporate surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, to continue or to liquidate the business of the principal, will execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. When under the provisions of § 24.157 the surety has filed an application to be relieved of liability under any bond given under this part and the principal desires or intends to continue business or operations to which the bond relates, the principal shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. New or superseding bonds will show the current date of execution and the effective date. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1394, as amended (26 U.S.C. 5354, 5362, 5551))

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§ 24.155 Disapproval and appeal from disapproval.

(a) *Disapproval.* The regional director (compliance) may disapprove any bonded wine premises bond or consent of surety if the individual, firm, partnership, corporation, or association giving the bond, or owning, controlling, or actively participating in the management of the bonded wine premises of the individual, firm, partnership, corporation, or association giving the bond, has been previously convicted in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of any law of the United States, if such provision relates to internal revenue or customs taxation of distilled spirits, wine, or beer, or if such offense has been compromised with the person on payment of penalties or otherwise, or

(2) Any felony under a law of any State, or of the District of Columbia, or of the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, beer, or other intoxicating liquor.

(b) *Appeal from disapproval.* Where a bond or consent of surety is disapproved by the regional director (compliance), the person giving the bond may appeal the disapproval to the Director. The decision of the Director will be final. (Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

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§ 24.156 Termination of bonds.

A bond prescribed in § 24.146 may be terminated as to future liability pursuant to application by the surety as provided in § 24.157; pursuant to approval of a superseding bond; upon receipt of notification from the principal that the business has been discontinued and all wine and spirits have been removed from the bonded wine premises as provided in § 24.140(b); or in the case of a tax deferral bond, the termination will be issued upon receipt of written notification from the principal that removals of wine requiring a tax deferral bond have been discontinued. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5354))

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§ 24.157 Application by surety for relief from bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the regional director (compliance) in whose office the bond is on file, that it desires after a specified date, to be relieved of liability under the bond. The date may not be less than 10 days after the date notice is received by the regional director (compliance) in the case of a tax deferral bond, and not less than 90 days after the date the notice is received in the case of a bonded wine premises bond or wine vinegar plant bond. The surety will also file with the regional director (compliance) an acknowledgment, or other evidence of service, of a notice on the principal. The 10 day or 90 day period does not commence until both the acknowledgment or other evidence of service and the notice are filed. If a notice is not thereafter withdrawn in writing, the rights of the principal as supported by the bond will be terminated on the date specified in the notice, and the surety will be relieved from liability to the extent set forth in § 24.158. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

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§ 24.158 Extent of relief.

(a) *General.* The surety on any bond required by this part who has filed a notice for relief from liability as provided in § 24.157 will be relieved from liability under bond as set forth in this section.

(b) *Wine bond.* Where a new or superseding bond is filed, the surety of the existing bond will be relieved of future liability with respect to wine, spirits, volatile fruit-flavor concentrate, or any other commodities subject to tax under 26 U.S.C. chapter 51 on hand or in transit to bonded wine premises on or after the effective date of the new or superseding bond. Notwithstanding such relief, the surety will remain liable for the tax on all wine or volatile fruit-flavor concentrate produced at, and for wine, spirits, and volatile fruit-flavor concentrate consigned to, the bonded wine premises, and for all other liabilities incurred, during the term of the bond. Where a new or superseding bond is not filed the surety will, in addition to the continuing liabilities specified above, remain liable for all wine, spirits, volatile fruit-flavor concentrate, or other commodities subject to tax under 26 U.S.C. chapter 51 on hand or in transit to bonded wine premises on the date specified in the notice, until all the wine, spirits, volatile fruit-flavor concentrate, or commodities subject to tax under 26 U.S.C. chapter 51 have been lawfully disposed of, or a new bond has been filed covering the liability.

(c) *Tax deferral bond.* The surety will be relieved of liability for the tax on any wine removed from the bonded wine premises after the date specified in the notice. The surety will continue to be liable for the tax on wine removed for consumption or sale on or before the date specified in the notice, until all tax is fully paid.

(d) *Wine vinegar plant bond.* The surety will be relieved of liability for tax on wine withdrawn for the manufacture of vinegar after the date specified in the notice. The surety will continue to be liable for the tax on wine withdrawn on or before the date specified in the notice, until all wine is fully accounted for. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

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§ 24.159 Release of collateral security.

Collateral security pledged and deposited will be released only in accordance with the provisions of 31 CFR Part 225. The collateral security will not be released by the regional director (compliance) until liability under the bond for which it was pledged has been terminated. If satisfied that the interests of the Government will not be jeopardized, the regional director (compliance) will fix the date or dates on which a part or all of the collateral security may be released. At any time prior to the release of the collateral security, the regional director (compliance) may, for proper cause, extend the date of release of the security for such additional length of time as deemed appropriate. (July 30, 1947, Ch. 390, Pub. L. 80–280, 61 Stat. 650 (31 U.S.C. 9301, 9303))

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Subpart E—Construction and Equipment

§ 24.165 Premises.

Wine premises will be located, constructed, and equipped, subject to approval by the regional director (compliance), in a manner suitable for the operations to be conducted and to afford adequate protection to the revenue. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5351, 5352, 5357, 5361, 5363))

§ 24.166 Buildings or rooms.

All buildings or rooms on wine premises in which wine operations or other operations as are authorized in this part are conducted will be located, constructed, and equipped in a manner suitable for the intended purpose and to afford adequate protection to the revenue. Each building or room will be constructed of substantial materials and separated from adjacent or contiguous buildings, rooms, or designated areas in a manner satisfactory to the regional director (compliance). Where spirits are to be received and stored in packages, a storage room equipped for locking will be provided. The proprietor shall make provisions to assure ATF officers have ready ingress to and egress from any building or room on wine premises, and shall furnish at the request of the regional director (compliance) evidence that the means of ingress and egress by ATF officers are assured. Where the regional director (compliance) finds that any building or room on wine premises is located, constructed, or equipped as to afford inadequate protection to the revenue, the proprietor will be required to make changes in location, construction, or equipment to the extent necessary to afford adequate protection to the revenue. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended (26 U.S.C. 5352, 5357))

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§ 24.167 Tanks.

(a) *General.* All tanks on wine premises used for wine operations or for other operations as are authorized in this part will be suitable for the intended purpose. Each tank used for wine operations will be located, constructed, and equipped as to permit ready examination and a means of accurately determining the contents. Any tank used for wine operations not enclosed within a building or room will be enclosed within a secure fence unless the premises where the tank is located are enclosed by a fence or wall, or all tank openings are equipped for locking and are locked when used for wine operations and there is no proprietor's representative on the wine premises, or the regional director (compliance) has approved some other adequate means of revenue protection. All open tanks will be under a roof or other suitable covering.

(b) *Other requirements.* Each tank used for the taxpayment of wine, storage of spirits, or spirits additions will be constructed and equipped as follows:

(1) An accurate means of measuring the contents of each tank will be provided by the proprietor. When a means of measuring is not a permanent fixture of the tank, the tank will be equipped with a fixed device to allow the approximate contents to be determined readily;

(2) Safe access to all parts of a tank will be provided by the proprietor;

(3) Tanks may not be used until they are accurately calibrated and a statement of certification of accurate calibration is on file at the premises;

(4) If a tank or its fixed measuring device is moved in location or position subsequent to original calibration, the tank may not be used until recalibrated; and

(5) All openings in tanks used for the storage, weighing, or measuring of spirits, or for the addition of spirits to wine, will be equipped for locking or have a similar means of revenue protection. Any vents, flame arrestors, foam devices, or other safety devices affixed to a spirits tank will be constructed to prevent extraction of the contents of the tank. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1395, as amended (26 U.S.C. 5352, 5357, 5552))

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§ 24.168 Identification of tanks.

(a) *General.* Each tank, barrel, puncheon, or similar bulk container, used to ferment wine or used to process or store wine, spirits, or wine making materials will have the contents marked and will be marked as required by this section.

(b) *Tank markings.* (1) Each tank will have a unique serial number;

(2) Each tank will be marked to show its current use, either by permanent markings or by removable signs of durable material; and

(3) If used to store wine made in accordance with a formula, the formula number will be marked or otherwise indicated on the tank.

(c) *Puncheon and barrel markings.* Puncheons and barrels, or similar bulk containers over 100 gallons capacity, will be marked in the same manner as tanks. A permanent serial number need not be marked on puncheons and barrels, or similar bulk containers of less than 100 gallons capacity, used for storage, but the capacity will be permanently marked. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended (26 U.S.C. 5352, 5357))

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§ 24.169 Pipelines.

Pipelines, including flexible hoses, used to convey wine, spirits, or volatile fruit-flavor concentrate will be constructed, connected, arranged, and secured so as to afford adequate protection to the revenue and to permit ready examination. The regional director (compliance) may approve pipelines which cannot be readily examined if no jeopardy to the revenue is created. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1395, as amended (26 U.S.C. 5352, 5357, 5552))

§ 24.170 Measuring devices and testing instruments.

(a) *Measuring devices.* The regional director (compliance) may at any time require proprietors to provide at their own expense equipment for ascertaining the capacity and contents of tanks and other storage containers, and scales and measuring devices for weighing and measuring wine, spirits, volatile fruit-flavor concentrate, or materials received and used in the production or treatment of wine. Where winemaking materials or other materials used in the treatment of wine are used immediately upon receipt on wine premises, or received and stored on bonded wine premises in original sealed shipping containers with a stated capacity, the quantity shown on the commercial invoice or other document covering the shipment may be accepted by the proprietor and entered into records in lieu of measuring the materials upon receipt.

(b) *Testing instruments.* The proprietor shall have ready access to equipment for determining the alcohol content unless the proprietor only receives and stores on wine premises bottled or packed wine with evidence showing the alcohol content has been determined. The proprietor who bottles or packs wine shall have ready access to equipment for determining the net contents of bottled or packed wine. The regional director (compliance) may require other testing instruments based upon the proprietor's operations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1395, as amended (26 U.S.C. 5357, 5552))

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Subpart F—Production of Wine

§ 24.175 General.

The kinds of wine which may be produced on bonded wine premises are as follows:

(a) Natural wine produced in accordance with subparts F and G of this part;

(b) Special natural wine produced in accordance with subpart H of this part;

(c) Agricultural wine produced in accordance with subpart I of this part; and

(d) Other than standard wine produced in accordance with subpart J of this part. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1383, as amended, 1384, as amended, 1385, as amended, 1386, as amended (26 U.S.C. 5361, 5382, 5384, 5385, 5386, 5387))

§ 24.176 Crushing and fermentation.

In producing natural wine, water may be used to flush equipment during the crushing process or to facilitate fermentation but the density of the juice may not be reduced below 22 degrees Brix. However, if the juice is already less than 23 degrees Brix, the use of water to flush equipment or to facilitate fermentation is limited to a juice density reduction of no more than one degree Brix. At the start of fermentation no material may be added in the production of natural wine except water, sugar, concentrated fruit juice from the same kind of fruit, malo-lactic bacteria, yeast or yeast cultures grown in juice of the same kind of fruit, and yeast foods, sterilizing agents, precipitating agents or other approved fermentation adjuncts. Water may be used to rehydrate yeast to a maximum of two gallons of water for each pound of yeast; however, except for an operation involving the preparation of a yeast culture starter and must mixture for later use in initiating fermentation, the maximum volume increase of the juice after the addition of rehydrated yeast is limited to 0.5 percent. After fermentation natural wines may be blended with each other only if produced from the same kind of fruit. Upon completion of fermentation or removal from the fermenter, the volume of wine will be accurately determined, recorded, and reported on ATF F 5120.17, Monthly Report of Wine Cellar Operations, as wine produced. Any wine or juice remaining in fermentation tanks at the end of the month will be recorded and reported on ATF F 5120.17. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1383, as amended, 1384, as amended, 1385, as amended (26 U.S.C. 5367, 5381, 5382, 5383, 5384))

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§ 24.177 Chaptalization (Brix adjustment).

In producing natural grape wine from juice having a low sugar content, pure dry sugar or concentrated juice of the same kind of fruit may be added before

or during fermentation to develop alcohol. In producing natural fruit wine from juice having a low sugar content, pure dry sugar, liquid sugar, or concentrated juice of the same kind of fruit may be added before or during fermentation to develop alcohol. The quantity of pure dry sugar, liquid sugar or concentrated juice added may not raise the original density of the juice above 25 degrees Brix. If grape juice or grape wine is ameliorated after chaptalization, the quantity of pure dry sugar added to juice for chaptalization will be included as ameliorating material. If fruit juice or fruit wine is ameliorated after chaptalization, pure dry sugar added under this section is not considered as ameliorating material. However, if liquid sugar is added to fruit juice, the volume of water contained in the liquid sugar will be included as ameliorating material. (Sec. 201, Pub. L. 85–859, 72 Stat. 1385, as amended (26 U.S.C. 5382, 5384))

§ 24.178 Amelioration.

(a) *General.* In producing natural wine from juice having a fixed acid level exceeding 5.0 grams per liter, the winemaker may adjust the fixed acid level by adding ameliorating material (water, sugar, or a combination of both) before, during and after fermentation. The fixed acid level of the juice is determined prior to fermentation and is calculated as tartaric acid for grapes, malic acid for apples, and citric acid for other fruit. Each 20 gallons of ameliorating material added to 1,000 gallons of juice or wine will reduce the fixed acid level of the juice or wine by 0.1 gram per liter (the fixed acid level of the juice or wine may not be less than 5.0 gram per liter after the addition of ameliorating material).

(b) *Limitations.* (1) Amelioration is permitted only at the bonded wine premises where the natural wine is produced.

(2) The ameliorating material added to juice or wine may not reduce the fixed acid level of the ameliorated juice or wine to less than 5.0 grams per liter.

(3) Except for wine made exclusively from loganberries, currants, or gooseberries, the volume of ameliorating material added to juice or wine may not exceed 35 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). Where the starting fixed acid level is or exceeds 7.69 grams per liter, a maximum of 538.4 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice.

(4) For wine produced exclusively from loganberries, currants, or gooseberries, the volume of ameliorating material added to juice or wine may not exceed 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). If the starting fixed acid level is or exceeds 12.5 grams per liter, a maximum of 1,500 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice. (Sec. 201, Pub. L. 85–859, 72 Stat. 1384, as amended, 1385, as amended (26 U.S.C. 5383, 5384))

§ 24.179 Sweetening.

(a) *General.* In producing natural wine, sugar, juice or concentrated fruit juice of the same kind of fruit may be added after fermentation to sweeten wine. When juice or concentrated fruit juice is added, the solids content of the finished wine may not exceed 21 percent by weight. When liquid sugar or invert sugar syrup is used, the resulting volume may not exceed the volume which would result from the maximum use of pure dry sugar only.

(b) *Grape wine.* Any natural grape wine of a winemaker's own production may have sugar added after amelioration and fermentation provided the finished wine does not exceed 17 percent total solids by weight if the alcohol content is more than 14 percent by volume or 21 percent total solids by weight if the alcohol content is not more than 14 percent by volume.

(c) *Fruit wine.* Any natural fruit wine of a winemaker's own production may have sugar added after amelioration and fermentation provided the finished wine does not exceed 21 percent total solids by weight and the alcohol content is not more than 14 percent by volume.

(d) *Specially sweetened natural wine.* Specially sweetened natural wine is produced by adding to natural wine of the winemaker's own production sufficient pure dry sugar, juice or concentrated fruit juice of the same kind of fruit, separately or in combination, so that the finished product has a total solids content between 17 percent and 35 percent by weight, and an alcohol content of not more than 14 percent by volume. Natural wine containing added wine spirits may be used in the production of specially sweetened natural wine; however, wine spirits may not be added to specially sweetened natural wine. Specially sweetened natural wines may be blended with each other, or with natural wine or heavy bodied blending wine (including juice or concentrated fruit juice to which wine spirits have been added), in the further production of specially sweetened natural wine only if the wines (or juice) so blended is made from the same kind of fruit. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended, 1384, as amended, 1385, as amended, 1386, as amended (26 U.S.C. 5382, 5383, 5384, 5385))

§ 24.180 Use of concentrated and unconcentrated fruit juice.

Concentrated fruit juice reduced with water to its original density, or to 22 degrees Brix, or to any degree of Brix between its original density and 22 degrees Brix, and unconcentrated fruit juice reduced with water to not less than 22 degrees Brix, is considered juice for the purpose of standard wine production. Concentrated fruit juice reduced with water to any degree of Brix greater that 22 degrees Brix may be further reduced with water to any degree of Brix between its original density and 22 degrees Brix. The proprietor, prior to using concentrated fruit juice in wine production, shall obtain a statement in which the producer certifies the kind of fruit from which it was produced and the total solids content of the juice before and after concentration. Concentrated or unconcentrated fruit juice may be used in juice or wine made from the same kind of fruit for the purposes of chaptalizing or sweetening, as provided in this part. Concentrated fruit juice, or juice which has been concentrated and reconstituted, may not be used in standard wine production if at any time it was concentrated to more than 80 degrees Brix. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

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§ 24.181 Use of sugar.

Only sugar, as defined in § 24.10, may be used in the production of standard wine. The use of liquid pure sugar or invert sugar syrup is limited so that the resulting volume will not exceed the volume which would result from the maximum use of pure dry sugar only. The quantity of sugar used will be determined either by measuring the increase in volume or by considering that each 13.5 pounds of pure dry sugar results in a volumetric increase of one gallon. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended, 1384, as amended, 1385, as amended, 1387, as amended (26 U.S.C. 5382, 5383, 5384, 5392))

§ 24.182 Use of acid to correct natural deficiencies.

(a) *General.* Acids of the kinds occurring in fruit or berries may be added within the limitations of § 24.246 to juice or wine in order to correct natural deficiencies; however, no acid may be added to juice or wine which is ameliorated to correct natural deficiencies.

(b) *Grape wine.* Tartaric acid or malic acid, or a combination of tartaric acid and malic acid, may be added prior to or during fermentation, to grapes or juice from grapes. After fermentation is completed, citric acid, fumaric acid, malic acid, lactic acid or tartaric acid, or a combination of two or more of these acids, may be added to correct natural deficiencies only to the extent that the fixed acid level of the finished wine (calculated as tartaric acid) does not exceed 9.0 grams per liter; However, if the wine contains 8.0 or more grams of total solids per 100 milliliters of wine, acids may be added to the extent that the finished wine does not contain more than 11.0 grams per liter of fixed acid (calculated as tartaric acid).

(c) *Fruit wine.* Only citric acid may be added to citrus fruit, juice or wine, only malic acid may be added to apples, apple juice or wine, and only citric acid or malic acid may be added to other fruit or berries or to juice or wine derived from other fruit or berries, to correct natural deficiencies to 9.0 grams per liter; however, if the wine contains 8.0 or more grams of total solids per 100 milliliters of wine, acids may be added to correct natural deficiencies to the extent that the finished wine does not contain more than 11.0 grams per liter of fixed acid (calculated as malic acid for apples and citric acid for other fruit and berries).

(d) *Other use of acid.* A winemaker desiring to use an acid other than the acids allowed in paragraphs (a) and (b) of this section to correct natural deficiencies shall follow the procedure prescribed in § 24.250. A winemaker desiring to use acid to stabilize standard wine shall follow the requirements prescribed by § 24.244. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.183 Use of distillates containing aldehydes.

Distillates containing aldehydes may be received on wine premises for use in the fermentation of wine and then returned to the distilled spirits plant from which distillates were withdrawn as distilling material. Distillates produced from one kind of fruit may not be used in the fermentation of wine made from a different kind of fruit. Distillates containing aldehydes which are received at bonded wine premises and not immediately used will be placed in a locked room or tank on bonded wine premises. Distillates containing aldehydes may not be mingled with wine spirits. If the distillates contain less than 0.1 percent of aldehydes, the proprietor shall comply with any additional condition relating to the receipt, storage, and use which the regional director (compliance) may require to assure that the distillates are properly used and accounted for. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5373))

§ 24.184 Use of volatile fruit-flavor concentrate.

(a) *General.* In the cellar treatment of natural wine of the winemaker's own production there may be added volatile fruit-flavor concentrate produced from the same kind of fruit or from the same variety of berry or grape so long as the proportion of volatile fruit-flavor concentrate added to the wine does not exceed the equivalent proportion of volatile fruit-flavor concentrate of the original juice or must from which the wine was produced.

(b) *Use of juice or must from which volatile fruit-flavor has been removed.* Juice, concentrated fruit juice, or must processed at a concentrate plant is considered to be pure juice, concentrated fruit juice, or must even though volatile fruit-flavor has been removed if, at a concentrate plant or at bonded wine premises, there is added to the juice, concentrated fruit juice, or must (or in the case of bonded wine premises, to wine of the winemaker's own production made therefrom), either the identical volatile fruit-flavor removed or an equivalent quantity of volatile fruit-flavor concentrate derived from the same kind of fruit or from the same variety of berry or grape.

(c) *Certificate required.* The proprietor, prior to the use of volatile fruit flavor concentrate in wine production, shall obtain a certificate from the producer stating the kind of fruit or the variety of berry or grape from which it was produced and the total solids content of the juice before and after concentration. (Sec. 201. Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control number 1512–0298)

Subpart G—Production of Effervescent Wine

§ 24.190 General.

Effervescent wine may be made on bonded wine premises. Where the effervescence results from fermentation of the wine within a closed container, the wine is classed and taxed as sparkling wine. The use of carbon dioxide, nitrogen gas, or a combination of both, is permitted to maintain counterpressure during the transfer of sparkling wine from bottles to processing tanks or *vice versa.* Wine carbonated by injection of carbon dioxide is classed and taxed as artificially carbonated wine. Sparkling wine, artificially carbonated wine, and any wine used as a base in the production of sparkling wine or artificially carbonated wine, may not have an alcohol content in excess of 14 percent by volume even though wine containing more than 14 percent of alcohol may be used in preparing a dosage for finishing sparkling wine or artificially carbonated wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.191 Segregation of operations.

Where more than one process of producing sparkling wine or artificially carbonated wine is used, the regional director (compliance) may require the portion of the premises used for the production and storage of wine made by each process (bottle fermented, bulk fermented or artificially carbonated) to be segregated as provided by § 24.27. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5365))

§ 24.192 Process and materials.

In preparing still wine for the production of sparkling wine or artificially carbonated wine, sugar and acid of the kinds and within the limitations prescribed in § 24.182 may be added with yeast or yeast culture to acclimate the yeast and to facilitate the process of secondary fermentation or to correct the wine. Fruit syrup, sugar, wine, wine spirits, and acid may be used in preparing a finishing dosage for sparkling wine or artificially carbonated wine provided the dosage does not exceed 10 percent by volume of the finished product. Where the proprietor desires to use more than 10 percent by volume finishing dosage, the proprietor shall file for a formula approval under § 24.80. The fruit syrup, wine spirits and wine used will come from the same kind of fruit as the wine from which the sparkling wine or artificially carbonated wine is made. In the production of sparkling wine or artificially carbonated wine, taxpaid wine spirits or wine spirits withdrawn tax-free may be used. Tax-free wine spirits may only be used in the production of sparkling wine or artificially carbonated wine which is a natural wine. In the refermentation and finishing of a sparkling wine, the acids and materials specifically authorized in § 24.246 may be used. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.193 Conversion into still wine.

Sparkling wine or artificially carbonated wine may be dumped for use as still wine. The dumping process will allow the loss of carbon dioxide remaining in the wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5041, 5361))

Subpart H—Production of Special Natural Wine

§ 24.195 General.

Special natural wine is a flavored wine made on bonded wine premises from a base of natural wine. The flavoring added may include natural herbs, spices, fruit juices, natural aromatics, natural essences or other natural flavoring, in quantities or proportions such that the resulting product derives character and flavor distinctive from the the base wine and distinguishable from other natural wine. Fruit juices may not be used to give to one natural wine the flavor of another but may be used with herbs or spices to produce a wine having a distinctive flavor. Caramel and sugar may be used in a special natural wine. However, the minimum 60 degrees Brix limitations prescribed in the definition of "Liquid pure sugar" and "Invert sugar syrup" in § 24.10 do not apply to materials used in the manufacture of vermouth. Finished vermouth will contain a minimum of 80 percent by volume natural wine. Heavy bodied blending wine and juice or concentrated fruit juice to which wine spirits have been added may be used in the production of special natural wine pursuant to formula approval. (Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.196 Formula required.

Before producing any special natural wine, the proprietor shall receive approval of the formula by which it is to be made as provided by § 24.80. Any change in a formula will be approved in advance as provided by § 24.81. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.197 Production by fermentation.

In producing special natural wine by fermentation, flavoring materials may be added before or during fermentation. Special natural wine produced by fermentation may be ameliorated in the same manner and to the same extent as natural wine made from the same fruit. Spirits may not be added to special natural wine with the exception of spirits contained in the natural wine used as a base or in authorized essences made on bonded wine premises as provided in § 24.86 or in approved essences made elsewhere. Upon removal of the wine from fermenters, the volume of liquid will be determined accurately and recorded as wine produced. The quantity of liquid in fermenters at the close of each month will be reported on the ATF F 5120.17, Monthly Report of Wine Cellar Operations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

§ 24.198 Blending.

Special natural wine may be blended with other special natural wine of the same class and kind, and with heavy bodied blending wine, or natural wine of the same kind of fruit, in the further production of special natural wine. The blending of special natural wines produced under different formulas requires the filing and approval of a formula authorizing a blending; however, where two or more formulas have been approved for the production of special natural wine of the same type, e.g., producing a sweet vermouth by blending sweet vermouths produced under two or more approved formulas, the submission and approval of an additional formula is not required. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

Subpart I—Production of Agricultural Wine

§ 24.200 General.

Agricultural wine may be produced on bonded wine premises from suitable agricultural products other than the juice of fruit. Water or sugar, or both, may be used within the limitations of this subpart in the production of agricultural wine. Agricultural wine may not be flavored or colored; however, hops may be used in the production of honey wine. Spirits may not be used in the production of the wine and a wine made from one agricultural product may not be blended with a wine made from another agricultural product. Agricultural wine made with sugar in excess of the limitations of this subpart is other than standard wine and will be segregated and clearly identified. Since grain, cereal, malt, or molasses are not suitable materials for the production of agricultural wine, these materials may not be received on bonded wine premises. Beverage alcohol products made with these materials are not classed as wine and may not be produced or stored on bonded wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5387))

§ 24.201 Formula required.

Before producing any agricultural wine, the proprietor shall obtain from the Director approval of the formula and process by which it is to be made pursuant to the provisions of § 24.80. Any change in a formula will be approved in advance as provided by § 24.81. (Sec. 201, Pub. L. 85–859. 72 Stat. 1386, as amended (26 U.S.C. 5387))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.202 Dried fruit.

In the production of wine from dried fruit, a quantity of water sufficient to restore the moisture content to that of the fresh fruit may be added. If it is desired not to restore the moisture content of the dried fruit to that of the fresh fruit, or if the moisture content is not known, sufficient water may be added to reduce the density to 22 degrees Brix. If the dried fruit liquid after restoration is found to be deficient in sugar, sufficient pure dry sugar may be added to increase the total solids content to 25 degrees Brix. After addition of water to the dried fruit, the resulting liquid may be ameliorated with either water or sugar, or both, in such total volume as may be necessary to reduce the natural fixed acid level of the mixture to a minimum of 5.0 grams per liter; however, in no event may the volume of the ameliorating material exceed 35 percent of the total volume of the ameliorated juice or wine (calculated exclusive of pulp). Pure dry sugar may be used for sweetening. After complete fermentation or complete fermentation and sweetening, the finished product may not have an alcohol content of more than 14 percent by volume nor may the total solids content exceed 35 degrees Brix. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended, 1387, as amended (26 U.S.C. 5387))

§ 24.203 Honey wine.

In the production of wine from honey, a quantity of water may be added to facilitate fermentation provided the density of the mixture of honey and water is not reduced below 22 degrees Brix. Hops may be added in quantities not to exceed one pound for each 1,000 pounds of honey. Pure dry sugar or honey may be added for sweetening. After complete fermentation or complete fermentation and sweetening, the wine

may not have an alcohol content of more than 14 percent by volume nor may the total solids content exceed 35 degrees Brix. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended, 1387, as amended (26 U.S.C. 5387))

§ 24.204 Other agricultural products.

In the production of wine from agricultural products, other than dried fruit and honey, water and sugar may be added to the extent necessary to facilitate fermentation; *Provided*, That the total weight of pure dry sugar used for fermentation is less than the weight of the primary winemaking material and the density of the mixture prior to fermentation is not less than 22 degrees Brix, if water, or liquid sugar, or invert sugar syrup is used. Additional pure dry sugar may be used for sweetening, provided the alcohol content of the finished wine after complete fermentation or after complete fermentation and sweetening, is not more than 14 percent by volume and the total solids content is not more than 35 degrees Brix. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended, 1387, as amended (26 U.S.C. 5387))

Subpart J—Production of Other than Standard Wine

§ 24.210 Classes of wine other than standard wine.

The following classes of wine are not standard wine:

(a) High fermentation wine, produced as provided in § 24.212;

(b) Heavy bodied blending wine, produced as provided in § 24.213;

(c) Spanish type blending sherry, produced as provided in § 24.214;

(d) Wine products not for beverage use, produced as provided in § 24.215;

(e) Distilling material, produced as provided in § 24.216;

(f) Vinegar stock, produced as provided in § 24.217; and

(g) Wines other than those in classes listed in paragraphs (a), (b), (c), (d), (e), and (f), of this section produced as provided in § 24.218. (Sec. 201, Pub. L. 85–859, 72 Stat. 1387, as amended (26 U.S.C. 5388))

§ 24.211 Formula required.

The proprietor who desires to produce wine other than standard wine shall first obtain approval of the formula by which it is to be made, except that no formula is required for distilling material or vinegar stock. The formula is filed with the Director as provided by § 24.80. Any change in the formula will be approved in advance as provided by § 24.81. (Sec. 201, Pub. L. 85–859, 72 Stat. 1387, as amended (26 U.S.C. 5388))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.212 High fermentation wine.

High fermentation wine is wine made with the addition of sugar within the limitations prescribed for natural wine except that the alcohol content after complete fermentation or complete fermentation and sweetening is more than 14 percent and wine spirits have not been added. Although high fermentation wine is not a standard wine, it is produced, stored, and handled on bonded wine premises subject to the same marking or labeling requirements. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended (26 U.S.C. 5365, 5388))

§ 24.213 Heavy bodied blending wine.

Heavy bodied blending wine is wine made for blending purposes from grapes or other fruit without added sugar, and with or without added wine spirits, and having a total solids content in excess of 21 percent. Heavy bodied blending wine may be used in blending with other wine made from the same kind of fruit or for removal upon payment of tax, not for sale or consumption as beverage wine. Upon removal, the shipping containers and shipping records will be marked "Heavy Bodied Blending Wine—Not for Sale or Consumption as Beverage Wine." (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1387, as amended (26 U.S.C. 5361, 5388))

(Approved by the Office of Management and Budget under control numbers 1512–0298 and 1512– 0503)

§ 24.214 Spanish type blending sherry.

Blending wine made with partially caramelized grape concentrate may be produced, stored, and handled on, or transferred in bond between, bonded wine premises, or removed upon payment of tax, not for sale or consumption as beverage wine. Wine of a high solids content and dark in color, produced under this section, is designated "Spanish Type Blending Sherry." Upon removal, the shipping containers will be marked with the applicable designation and the legend "Not for Sale or Consumption as Beverage Wine." Spanish type blending sherry is not standard wine and may not be blended with standard wine except pursuant to an approved formula or in the further production of this type of wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1387, as amended (26 U.S.C. 5361, 5388))

(Approved by the Office of Management and Budget under control numbers 1512–0059 and 1512–0503)

§ 24.215 Wine or wine products not for beverage use.

(a) *General.* Wine, or wine products made from wine, may be treated with methods or materials which render the wine or wine products unfit for beverage use. No wine or wine products so treated may contain more than 21 percent of alcohol by volume at the time of withdrawal free of tax from bonded wine premises; nor may any wine or wine product so withdrawn be used in the compounding of distilled spirits or wine for beverage use or in the manufacture of any product intended to be used in the compounding. Wine or wine products produced under this section will be clearly identified and segregated from beverage wine products while stored on bonded wine premises and may be transferred in bond between bonded wine premises. The shipping records for transfers in bond of nonbeverage wine or wine products will be marked "Not for Sale or Consumption as Beverage Wine." Upon removal from bonded wine premises free of tax, containers of nonbeverage wine or wine products will be marked to clearly indicate such products are not for sale or consumption as beverage wine, e.g., salted wine, vinegar, nonbeverage cooking wine.

(b) *Salted wine.* Salted wine is a wine or wine product not for beverage use produced in accordance with the provisions of this section and having not less than 1.5 grams of salt per 100 milliliters of wine.

(c) *Vinegar.* Vinegar is a wine or wine product not for beverage use produced in accordance with the provisions of this section and having not less than 4.0 grams (4.0 percent) of volatile acidity (calculated as acetic acid and exclusive of sulfur dioxide) per 100 milliliters of wine. (Sec. 201, Pub. L. 85–859 and Sec. 455, Pub. L. 98–369, 72 Stat. 1380, as amended (26 U.S.C. 5361, 5362))

(Approved by the Office of Management and Budget under control number 1512-0503)

§ 24.216 Distilling material.

Wine may be produced on bonded wine premises from grapes and other fruit, natural fruit products, or fruit residues, for use as distilling material, using any quantity of water desired to facilitate fermentation or distillation. No sugar may be added in the production of distilling material. Distillates containing aldehydes may be used in the fermentation of wine to be used as distilling material. Lees, filter wash, and other wine residues may also be accumulated on bonded wine premises for use as distilling material. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as

amended, 1381, as amended, 1382, as amended (26 U.S.C. 5361, 5373))

§ 24.217 Vinegar stock.

Vinegar stock may be produced on bonded wine premises with the addition of any quantity of water desired to meet commercial standards for the production of vinegar. Vinegar stock may be made only by the addition of water to wine or by the direct fermentation of the juice of grapes or other fruit with added water. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended (26 U.S.C. 5361))

§ 24.218 Other wine.

(a) *General.* Other than standard wine not included in other sections in this subpart are considered other wine. Those wines considered to be other wine include:

(1) Wine made with sugar, water, or sugar and water beyond the limitations prescribed for standard wine.

(2) Wine made by blending wines produced from different kinds of fruit.

(3) Wine made with sugar other than pure dry sugar, liquid pure sugar, and invert sugar syrup.

(4) Wine made with materials not authorized for use in standard wine.

(b) *Production of other wine.* Other wine may be made on bonded wine premises but will remain segregated from standard wine. Other wine will have a basic character derived from the primary winemaking material. If sugar is used to make other wine, the aggregate weight of the sugar used before and during fermentation will be less than the weight of the primary wine producing material. Wine spirits may be added to other wine. Upon removal, other wine will be marked or labeled with a designation which will adequately disclose the nature and composition of the wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended (26 U.S.C. 5365, 5388))

(Approved by the Office of Management and Budget under control number 1512–0503)

Subpart K—Spirits

§ 24.225 General.

The proprietor of a bonded wine premises may withdraw and receive spirits without payment of tax from the bonded premises of a distilled spirits plant for uses as are authorized in this part. Wine spirits produced in the United States may be added to natural wine on bonded wine premises if both the wine and the spirits are produced from the same kind of fruit. In the case of still wine, wine spirits may be added in any State only to natural wine produced by fermentation on bonded wine premises located within the same State. If wine has been ameliorated, wine spirits may be added (whether or not wine spirits were previously added) only if the wine contains not more than 14 percent of alcohol by volume derived from fermentation. Spirits other than wine spirits may be received, stored and used on bonded wine premises only for the production of nonbeverage wine and nonbeverage wine products. Wooden storage tanks used for the addition of spirits may not be used for the making of wine. (Sec. 201, Pub. L. 85–859 and Sec. 455, Pub. L. 98–369, 72 Stat. 1381 as amended, 1382, as amended, 1383, as amended, 1384, as amended (26 U.S.C. 5366, 5373, 5382, 5383)

§ 24.226 Receipt or transfer of spirits.

When spirits are received at the bonded wine premises, the proprietor shall determine that the spirits are the same as described on the transfer record and follow the procedures prescribed by 27 CFR 19.510. A copy of the transfer record, annotated to show any difference between the description of spirits and quantity received, will be maintained by the proprietor as a record of receipt. If spirits are to be transferred to a distilled spirits plant or to bonded wine premises, the proprietor shall use the transfer record and procedures prescribed by 27 CFR 19.508. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.227 Transfer of spirits by pipeline for immediate use.

Spirits transferred by pipeline for immediate use are gauged either by weight or by volume on the bonded premises of the distilled spirits plant. Where the spirits are gauged on the bonded premises of the distilled spirits plant, the pipelines will be directly connected with the spirits addition tanks. The valves in the pipeline will be closed and locked with a lock at all times except when necessary to be opened for the transfer of spirits. Where the proprietor has placed in a spirits addition tank and has determined the quantity of spirits to be added, the spirits may be transferred. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 24.228 Transfer of spirits by pipeline to a wine spirits storage tank.

Where it is desired to transfer spirits by pipeline to bonded wine premises and store the spirits prior to use, there will be provided a suitable tank for storing the spirits. The spirits to be transferred, if not gauged on the bonded premises of the distilled spirits plant, will be gauged by weight or volume on bonded wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 24.229 Tank car and tank truck requirements.

Railroad tank cars and tank trucks used to transport spirits for use in wine production will be constructed, marked, filled, labeled, and inspected in the manner required by regulations in 27 CFR part 19. (Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended (26 U.S.C. 5206, 5214))

§ 24.230 Examination of tank car or tank truck.

Upon arrival of a tank car or tank truck at the bonded wine premises, the proprietor shall carefully examine the car or truck to see whether the seals are intact and whether there is any evidence of tampering or loss by leaking or otherwise. Any evidence of loss will be reported to the area supervisor. The contents of the tank car or tank truck will be gauged by weight or volume at the time of receipt by the proprietor. If the tank car or tank truck has been accurately calibrated and the calibration chart is available at the bonded wine premises, the spirits may be gauged by volume in the tank car or tank truck. In any case where a volume gauge is made, the actual measurements of the spirits in the gauging tank, tank car, or tank truck, and the temperature of the spirits will be recorded on the copy of the transfer record accompanying the shipment. (Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1381, as amended (26 U.S.C. 5206, 5214, 5366))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.231 Receipt of spirits in sealed bulk containers.

The proprietor shall examine sealed bulk containers (packages) of spirits received at the bonded wine premises to verify that the containers are the same as those described on the transfer record accompanying the shipment. Any container which appears to have been tampered with or from which spirits appear to have been removed or lost will be gauged by the proprietor and the proprietor shall prepare and submit to the regional director (compliance) a statement setting forth fully the circumstances and apparent cause of any loss. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5366, 5367, 5368, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)

§ 24.232 Gauge of spirits.

(a) If the spirits to be used are in a spirits storage tank on bonded wine premises, or are received immediately prior to use from a distilled spirits plant not adjacent or contiguous to bonded wine premises, the proprietor shall determine the proof of the spirits and the quantity used by volume gauge or by weight. Upon completion of the transfer of spirit from the spirits storage tank to the spirits addition tank, the proprietor shall lock the spirits storage tank.

(b) If the spirits are received from the adjacent or contiguous bonded premises of a distilled spirits plant and are transferred directly into a spirits addition tank, the gauge of the spirits made on the distilled spirits plant premises will be used. The proprietor at the distilled spirits plant premises shall deliver a transfer record to the proprietor of bonded wine premises who shall acknowledge receipt of the spirits on the transfer record.

(c) If the spirits are received in packages and the quantity of spirits needed for the addition is not equal to the contents of full packages, a portion of one package may be used and the remnant package returned to the spirits storage room. The proprietor shall gauge the remnant package and attach to it a label showing the date of gauge, the weight of the remnant package, and the proof. The remnant package will be used at the first opportunity. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5368, 5373))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.233 Addition of spirits to wine.

(a) *Prior to the addition of spirits.* Wine will be placed in tanks approved for the addition of spirits. The proprietor shall accurately measure the wine, determine its alcohol content, determine the proof of the spirits to be added, calculate the quantity of spirits required, and enter the details in the record of spirits added to wine.

(b) *After the addition of spirits.* The proprietor shall thoroughly agitate the contents of the tank to assure a complete mixture of the wine and spirits. The proprietor shall then measure the volume of wine in the tank, take a representative sample of the wine, and test for alcohol content. The result of the measurement and test and the quantity of spirits added will be entered in the record of spirits added to wine. The volume of wine used and the volume of wine resulting from the addition of spirits will be entered in the bulk wine record. The alcohol content of wine after the addition of spirits may not exceed 24 percent by volume. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended (26 U.S.C. 5367, 5373, 5382))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.234 Other use of spirits.

The proprietor producing sparkling wine, artificially carbonated wine, formula wine, or essences for which spirits are required may use tax-free wine spirits or brandy. For nonbeverage wine, tax-free spirits other than wine spirits or brandy may also be used. The spirits received by the proprietor will be locked in a secure room or locker on bonded wine premises. The spirits will remain in the original container in the storeroom until withdrawn for use. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended, 1383, as amended (26 U.S.C. 5373, 5382))

§ 24.235 Taxpayment or destruction of spirits.

(a) *Taxpayment of spirits.* The proprietor who wants to taxpay spirits shall follow the prepayment of tax procedures of 27 CFR 19.522(c).

(b) *Destruction of spirits.* The proprietor who wants to destroy spirits shall file an application with the area supervisor stating the quantity of spirits, the proposed date and method of destruction, and the reason for destruction. Spirits may not be destroyed prior to approval by the area supervisor. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

(Approved by the Office of Management and Budget under control number 1512–0292)

§ 24.236 Losses of spirits.

Losses by theft or any other cause of spirits while on bonded wine premises or in transit are to be determined and reported at the time the losses are discovered. A physical inventory of the spirits storage tanks will be taken at the close of any month during which spirits were used in wine production, or upon completion of spirits use for the month or at any other time required by the regional director (compliance). Any loss which has not previously been reported will be determined by the inventory. (Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008, 5373))

(Approved by the Office of Management and Budget under control number 1512–0292)

§ 24.237 Spirits added to juice or concentrated fruit juice.

Juice or concentrated fruit juice to which spirits have been added may not have an alcohol content exceeding 24 percent by volume. Although not considered to be wine, juice or concentrated fruit juice to which spirits have been added will be included in the appropriate tax class of any wine inventory and will be properly identified. Juice or concentrated juice to which wine spirits are added will be reported on the ATF F 5120.17, Monthly Report of Wine Cellar Operations, as wine, but a separate record will be maintained. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

Subpart L—Storage, Treatment and Finishing of Wine

§ 24.240 General.

Wine will be stored on bonded wine premises in buildings or tanks constructed and secured in accordance with the provisions of §§ 24.266 and 24.267. Wine will be stored in tanks, casks, barrels, cased or uncased bottles, or in any other suitable container, which will not contaminate the wine. Specifically authorized materials and processes for the treatment and finishing of wine are listed in §§ 24.246 and 24.248 of this subpart. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1383, as amended, 1395, as amended (26 U.S.C. 5352, 5357, 5382, 5552))

§ 24.241 Decolorizing juice or wine.

(a) *Conditions and limitations.* If the proprietor wishes to use activated carbon or other decolorizing material to remove color from juice or wine, the following conditions and limitations will be met:

(1) The wine will retain a vinous character after being treated with activated carbon or other decolorizing material;

(2) The quantity of activated carbon used to treat the wine, including the juice from which the wine was produced, may not exceed twenty-five pounds per 1,000 gallons (3.0 grams per liter) (see paragraph (b) of this section); and

(3) The wine treated with decolorizing material will have a color of not less than 0.6 Lovibond in a one-half inch cell or not more than 95 percent transmittance per AOAC Method 11.003–11.004 (see paragraph (c) of this section). However, the proprietor may produce a wine having a color of less than 0.6 Lovibond or more than 95 percent transmittance per AOAC Method 11.003–11.004 by using normal

methods and without the use of decolorizing material.

(b) *Transfer in bond.* When a consignor proprietor transfers wine treated with activated carbon or other decolorizing material to a consignee proprietor, the consignor proprietor shall record on the shipping record:

(1) The amount of wine which has been treated under the provisions of this section; and

(2) The quantity of decolorizing material used in treating the wine, including the juice from which the wine was produced, before its transfer. The consignee proprietor may further treat the wine with decolorizing material as long as the consignee proprietor has a copy of the shipping record and complies with the requirements of this section.

(c) Incorporation by reference. The "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC Method 11.003–11.004; 13th Edition 1980) is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register, and is available for inspection at the Office of the Federal Register, room 8401, 1100 L Street, NW., Washington, DC. The publication is available from the Association of Official Analytical Chemists, 11 North 19th Street, Suite 210, Arlington, Virginia 22209. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.242 Authority to use greater quantities of decolorizing material in juice or wine.

(a) *Proprietor's notice.* If the proprietor desires to remove color from juice prior to fermentation or if color in excess of that normally present in wine develops during the production or storage of a particular lot or lots, and if the proprietor desires to use activated carbon in excess of twenty-five pounds per 1,000 gallons (3.0 grams per liter) of juice or wine to remove this color, the proprietor, prior to starting the treatment, shall submit to the regional director (compliance) a written notice for each lot of juice or wine to be treated for decolorization. The written notice will state

(1) The reason for the treatment;

(2) The volume, kind, and type of juice or wine to be treated;

(3) The kind and quantity of decolorizing material to be used; and,

(4) The length of time the decolorizing material is in contact with the juice or wine.

(b) *Action by the regional director (compliance) on proprietor's notice.* Upon receipt of the proprietor's notice, the regional director (compliance) may require the proprietor to submit samples representative of the lot of juice or wine for examination by the ATF laboratory.

(c) *Samples and chemical analysis—*(1) *Samples.* If the regional director (compliance) requires samples under paragraph (b) of this section, the proprietor shall prepare samples representative of the lot of juice or wine for examination. The samples will consist of:

(i) The juice or wine before treatment with decolorizing material,

(ii) The juice or wine after treatment with decolorizing material, and

(iii) The decolorizing material used.

(2) *Chemical analysis.* If the ATF chemical analyses of the samples shows that the proposed treatment would remove only color and will not remove the vinous characteristics of the wine, the regional director (compliance) will return an approved copy of the proprietor's written notice. If the ATF chemical analysis shows that the proposed treatment is not acceptable, the regional director (compliance) will send the proprietor a letter stating the reason(s) for disallowing the proposed treatment. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)

§ 24.243 Filtering aids.

Inert fibers, pulps, earths, or similar materials, may be used as filtering aids in the cellar treatment and finishing of wine. Agar-agar, carrageenan, cellulose, and diatomaceous earth are commonly employed inert filtering and clarifying aids. In general, there is no limitation on the use of inert materials and no records need be maintained concerning their use. However, if the inert material is dissolved in water prior to addition to wine, then the records required by § 24.301 will be maintained. Filtering aids which contain active chemical ingredients or which may alter the character of wine, may be used only in accordance with the provisions of § 24.246. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.244 Use of acid to stabilize standard wine.

Standard wine other than citrus wine, regardless of the fixed acid level, may be stabilized as a part of the finishing process by the addition of citric acid within the limitations of § 24.246. Standard wine (including citrus wine) may be stabilized by the addition of fumaric acid within the limitations of § 24.246. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.245 Use of carbon dioxide in still wine.

The addition of carbon dioxide to (and retention in) still wine is permitted if at the time of removal for consumption or sale the still wine does not contain more than 0.392 grams of carbon dioxide per 100 milliliters of wine. However, a tolerance of not more than 0.009 grams per 100 milliliters to the maximum limitation of carbon dioxide in still wine will be allowed where the amount of carbon dioxide in excess of 0.392 grams per 100 milliliters is due to mechanical variations which can not be completely controlled under good commercial practice. A tolerance will not be allowed where it is found that the proprietor continuously or intentionally exceeds 0.392 grams of carbon dioxide per 100 milliliters of wine or where the variation results from the use of methods or equipment determined by the Director not in accordance with good commercial practice. The proprietor shall determine the amount of carbon dioxide added to wine using authorized test procedures. Penalties are provided in 26 U.S.C. 5662 for any person who, whether by manner of packaging or advertising or by any other form of representation, misrepresents any still wine to be effervescent wine or a substitute for effervescent wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1381, as amended, 1407, as amended (26 U.S.C. 5041, 5367, 5662))

§ 24.246 Materials authorized for treatment of wine and juice.

(a) *Wine.* Materials used in the process of filtering, clarifying, or purifying wine may remove cloudiness, precipitation, and undesirable odors and flavors, but the addition of any substance foreign to wine which changes the character of the wine, or the abstraction of ingredients which will change its character, to the extent inconsistent with good commercial practice, is not permitted on bonded wine premises. The materials listed in this section are approved, as being consistent with good commercial practice in the production, cellar treatment, or finishing of wine, and where applicable in the treatment of juice, within the general limitations of this section: *Provided,* That:

(1) When the specified use or limitation of any material on this list is determined to be unacceptable by the

U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the material in the production, cellar treatment, or finishing of wine; and

(2) Where water is added to facilitate the solution or dispersal of a material, the volume of water added, whether the material is used singly or in combination with other water based treating materials, may not total more than one percent of the volume of the treated wine, juice, or both wine and juice, from which such wine is produced.

(b) *Formula wine.* In addition to the material listed in this section, other material may be used in formula wine if approved for such use.

Materials	Use	Reference or limitation
Acacia (gum arabic)	To clarify and to stabilize wine	The amount used shall not exceed 2 lbs/1000 gals. (0.24 g/L) of wine. 21 CFR 184.1330 (GRAS) [1]
Activated carbon	To assist precipitation during fermentation	27 CFR 24.176. GRAS per FDA advisory opinion dated 1/26/79.
	To clarify and to purify wine	The amount used to clarify and purify wine shall be included in the total amount of activated carbon used to remove excessive color in wine. 27 CFR 24.241 and 24.242 (GRAS).
	To remove color in wine and/or juice from which the wine was produced.	The amount used to treat the wine, including the juice from which the wine was produced, shall not exceed 25 lbs/1000 gal. (3.0 g/L). If the amount necessary exceeds this limit, a notice is required pursuant to 27 CFR 24.242 (GRAS).
Albumen (egg white)	Fining agent for wine	May be prepared in a light brine 1 oz. (28.35 grams) potassium chloride, 2 lbs (907.2 grams) egg white, 1 gal. (3.785 L) of water. Usage not to exceed 1.5 gals. of solution per 1,000 gals. of wine. (GRAS).
Aluminosilicates (hydrated) e.g., Bentonite (Wyoming clay) and Kaolin.	To clarify and to stabilize wine or juice	21 CFR 182.2727, 182.2729, 184.1155 (GRAS) and 186.1256, GRAS per FDA advisory opinion dated July 26, 1985.
Ammonium carbonate	Yeast nutrient to facilitate fermentation to wine.	The natural fixed acids shall not be reduced below 5 g/L. The amount used shall not exeed 2 lbs/1000 gals. (0.24 g/L). 21 CFR 184.1137 (GRAS).
Ammonium phosphate (*mono-* and *dibasic*)	Yeast nutrient in wine production and to start secondary fermentation in the production of sparkling wines.	The amount used shall not exceed 8 lbs. per 1000 gals. (0.96 g/L) of wine. 21 CFR 184.1141 (GRAS).
Ascorbic acid *iso*-ascorbic acid (erythorbic acid).	To prevent oxidation of color and flavor components of juice and wine.	May be added to fruit, grapes, berries, and other primary wine making materials, or to the juice of such materials, or to the wine, within limitations which do not alter the class or type of the wine. 21 CFR 182.3013 and 182.3041 (GRAS).
Calcium carbonate (with or without calcium salts of tartaric and malic acids).	To reduce the excess natural acids in high acid wine.	The natural or fixed acids shall not be reduced below 5 g/L. 21 CFR 184.1069 and 182.1099, and 184.1191 (GRAS).
	A fining agent for cold stabilization	The amount used shall not exceed 30 lbs/1000 gals. (3.59 g/L) of wine.
Calcuim sulfate (gypsum)	To lower pH in sherry wine	The sulfate content of the finished wine shall not exceed 2.0 g/L, expressed as potassium sulfate. 27 CFR 24.214. 21 CFR 184.1230 (GRAS).
Carbon dioxide (including food grade dry ice).	To stabilize [2] and to preserve wine	27 CFR 24.245. 21 CFR 184.1240 (GRAS).
Casein, potassium salt of casein	To clarify wine	GRAS per FDA opinions of 02/23/60 and 08/25/61. 27 CFR 24.243.
Citric acid	To correct natural acid deficiencies in wine	27 CFR 24.182 and 24.192. 21 CFR 182.1033 (GRAS).
	To stabilize wine other than citrus wine	The amount of citric acid shall not exceed 5.8 lbs/1000 gals. (0.7 g/L). 27 CFR 24.244. 21 CFR 182.1033 (GRAS).
Copper sulfate	To remove hydrogen sulfide and/or mercaptans from wine.	The quantity of copper sulfate added (calculated as copper) shall not exceed 0.5 part copper per million parts of wine (0.5 m/L) with the residual level of copper not to be in excess of 0.2 part per million (0.2 mg/L). 21 CFR 184.1261 (GRAS).
Defoaming agents: (polyoxyethylene 40 monostearate, silicon dioxide, dimethylpolysiloxane, sorbitan monostearate, glyceryl monooleate and glyceryl dioleate).	To control foaming, fermentation adjunct	Defoaming agents which are 100% active may be used in amounts not exceeding 0.15 lbs/1000 gals. (0.018 g/L) of wine. Defoaming agents which are 30% active may be used in amounts not exceeding 0.5 lbs/1000 gals. (0.06 g/L) of wine. Silicon dioxide shall be completely removed by filtration. The amount of silicon remaining in the wine shall not exceed 10 parts per million. 21 CFR 173.340 and 184.1505.
Enzymatic activity:		The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
Carbohydrase (*alpha*-Amylase)	To convert starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from *Aspergillus niger, Aspergillus oryzae, Bacillus subtilis,* or barley malt per FDA advisory opinion of 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Bacillus licheniformis* per 21 CFR 184.1027.
Carbohydrase (*Beta*-Amylase	To convert starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from barley malt per FDA advisory opinion dated 8/18/83.
Carbohydrase (Glycoamylase, Amyloglucosidase).	To convert starches to fermentable carbohyrates.	The amylase enzyme activity shall be derived from *Aspergillus niger* or *Aspergillus oryzae* per FDA advisory opinion dated 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Rhizopus niveus* per 21 CFR 173.110.
Catalase	To clarify and to stabilize wine	The enzyme activity used shall be derived from *Aspergillus niger* or bovine liver per FDA advisory opinion dated 8/18/83 (GRAS).
Cellulase	To clarify and to stabilize wine and to facilitate separation of the juice from the fruit.	The enzyme activity used shall be derived from *Aspergillus niger* per FDA advisory opinion dated 8/18/83 (GRAS).
Glucose oxidase	To clarify and to stabilize wine	The enzyme activity used shall be derived from *Aspergillus niger* per FDA advisory opnion of 8/18/83 (GRAS).
Pectinase	To clarify and to stabilize wine and to facilitate separation of juice from the fruit.	The enzyme activity used shall be derived from *Aspergillus niger* per FDA advsory opinion dated 8/18/83 (GRAS).

Materials	Use	Reference or limitation
Protease (general)	To reduce or to remove heat labile proteins.	The enzyme activity used shall be derived from *Aspergillus niger* or *Bacillus subtilis* per FDA advisory opinion dated 08/18/83 or from *Bacillus licheniformis* per 21 CFR 184.1027 (GRAS).
Protease (Bromelin)	To reduce or to remove heat labile proteins.	The enzyme activity used shall be derived from *Ananus comosus* or *Ananus bracteatus*(*L*) per FDA advisory opinion dated 08/18/83 (GRAS).
Protease (Ficin)	To reduce or to remove heat labile proteins.	The enzyme activity used shall be derived from *Ficus spp.* per FDA advisory opinion dated 08/18/83 (GRAS).
Protease (Papain)	To reduce or to remove heat labile proteins.	The enzyme activity used shall be derived from *Carica papaya*(*L*) per 21 CFR 184.1585 (GRAS).
Protease (Pepsin)	To reduce or to remove heat labile proteins.	The enzyme activity used shall be derived from porcine or bovine stomachs per FDA advisory opinion dated 08/18/83 (GRAS).
Protease (Trypsin)	To reduce or to remove heat labile proteins.	The enzyme activity used shall be derived from porcine or bovine pancreas per FDA advisory opinion dated 08/18/83 (GRAS).
Ethyl maltol	To stabilize wine	Use authorized at a maximum level of 100 mg/L in all standard wines except natural wine produced from *Vitis vinifera* grapes. FDA advsory opinion dated 12/1/86.
Ferrocyanide compounds (sequestered complexes).	To remove trace metal from wine and to remove objectionable levels of sulfide and mercaptans from wine.	No insoluble or soluble residue in excess of 1 part per million shall remain in the finished wine and the basic character of the wine shall not be changed by such treatment. GRAS per FDA advisory opinion of 06/22/82.
Ferrous sulfate	To clarify and to stabilize wine	The amount used shall not exceed 3 ozs./1000 gals. (0.022 g/L) of wine. 21 CFR 184.1315 (GRAS).
Fumaric acid	To correct natural acid deficiencies in grape wine.	The fumaric acid content of the finished wine shall not exceed 2.4 g/L. 27 CFR 24.182 and 24.192. 21 CFR 172.350.
	To stabilize wine	The fumaric acid content of the finished wine shall not exceed 2.4 g/L. 27 CFR 24.244. 21 CFR 172.350.
Gelatin (food grade)	To clarify juice or wine	(GRAS).
Granular cork	To smooth wine	The amount used shall not exceed 10 lbs/1000 gals. of wine (1.2 g/L). GRAS per FDA advisory opinion dated 02/25/85.
Hydrogen peroxide	To remove color from the juice of red and black grapes.	The amount used shall not exceed 500 parts per million. The use of hydrogen peroxide is limited to oxidizing color pigment in the juice of red and black grapes. 21 CFR 182.1366 (GRAS).
Isinglass	To clarify wine	GRAS per FDA advisory opinion dated 02/25/85.
Lactic acid	To correct natural acid deficiencies in grape wine.	27 CFR 24.182 and 24.192. 21 CFR 184.1061 (GRAS).
Malic acid	To correct natural acid deficiencies in juice or wine.	27 CFR 24.182 and 24.192. 21 CFR 184.1069 (GRAS).
Malo-lactic bacteria	To stabilize grape wine	Malo-lactic bacteria of the type *Leuconostoc oenos* may be used in treating wine. GRAS per FDA advisory opinion dated 02/25/85.
Maltol	To stabilize wine	Use authorized at a maximum level of 250 mg/L in all standard wine except natural wine produced from *Vitis vinifera* grapes. FDA advisory opinion dated 12/1/86.
Nitrogen gas	To maintain pressure during filtering and bottling or canning of wine and to prevent oxidation of wine.	21 CFR 184.1540 (GRAS).
Oak chips or particles, uncharred and untreated.	To smooth wine	21 CFR 172.510.
Oxygen and compressed air	In baking or maturing wine and aeration of sherry.	May be used provided it does not cause changes in the wine other than those occurring during the usual storage in wooden cooperage over a period of time.
Polyvinylpolypyrrolidone (PVPP)	To clarify and to stabilize wine	The amount used shall not exceed 6.7 lbs/1000 gals. (0.8 g/L) of wine and shall be removed during filtration. PVPP may be used in a continuous or batch process. 21 CFR 173.50.
Potassium bitartrate	To stabilize grape wine	The amount used shall not exceed 35 lbs/1000 gals. (4.19 g/L) of grape wine. 21 CFR 184.1077 (GRAS).
Potassium carbonate and/or potassium bicarbonate.	To reduce excess natural acidity in wine	The natural or fixed acids shall not be reduced below 5 parts per thousand (5 g/L). 21 CFR 184.1619 and 184.1613 (GRAS).
Potassium citrate	pH control agent and sequestrant in treatment of citrus wines.	The amount of potassium citrate shall not exceed 25 lbs/1000 gals. (3.0 g/L) of finished wine. 27 CFR 24.182. 21 CFR 182.1625 and 182.6625 (GRAS).
Potassium metabisulfite	To sterilize and to preserve wine	The sulfur dioxide content of the finished wine shall not exceed the limitations prescribed in 27 CFR 4.22. 21 CFR 182.3637 (GRAS).
Silica gel (colloidal silicon dioxide)	To clarify wine	Use shall not exceed the equivalent of 20 lbs. colloidal silicon dioxide at a 30% concentration per 1000 gals. of wine. (2.4 g/L). Silicon dioxide shall be completely removed by filtration. (GRAS).
Sorbic acid and potassium salt of sorbic acid.	To sterilize and to preserve wine; to inhibit mold growth and secondary fermentation.	The finished wine shall contain not more than 300 milligrams of sorbic acid per liter of wine. 21 CFR 182.3089 and 182.3640 (GRAS).
Soy flour (defatted)	Yeast nutrient to facilitate fermentation of wine.	The amount used shall not exceed 2 lbs/1000 gals. (0.24 g/L) of wine (GRAS).
Sulfur dioxide	To sterilize and to preserve wine	The sulfur dioxide content of the finished wine shall not exceed the limitations prescribed in 27 CFR 4.22(b)(1). 21 CFR 182.3862 (GRAS).
Tannin	To adjust tannin content in apple juice or in apple wine.	The residual amount of tannin shall not exceed 3.0 g/L, calculated as gallic acid equivalents (GAE). GRAS per FDA advisory opinions dated 4/6/59 and 3/29/60. Total tannin shall not be increased by more than 150 milligrams/liter by the addition of tannic acid (polygalloylglucose).
	To clarify or to adjust tannin content of juice or wine (other than apple).	The residual amount of tannin, calculated in gallic acid equivalents, shall not exceed 0.8 g/L in white wine and 3.0 g/L in red wine. Only tannin which does not impart color may be used in the cellar treatment of juice or wine. GRAS per FDA advisory opinions dated 4/6/59 and 3/29/60. Total tannin shall not be increased by more than 150 milligrams/liter by the addition of tannic acid (polygalloylglucose).

Materials	Use	Reference or limitation
Tartaric acid	To correct natural acid deficiencies in grape juice or grape wine.	Use as prescribed in 27 CFR 24.182 and 24.192. 21 CFR 184.1099 (GRAS).
Thiamine hydrochloride	Yeast nutrient to facilitate fermentation of wine.	The amount used shall not exceed 0.005 lb/1000 gals. (0.6 mg/L) of wine or juice. 21 CFR 184.1875 (GRAS).
Yeast, autolyzed	Yeast nutrient to facilitate fermentation in the production of grape or fruit wine.	21 CFR 172.896 and 184.1983. GRAS per FDA advisory opinion of 10/06/59.
Yeast, cell wall/membranes of autolyzed yeast.	To facilitate fermentation of juice/wine	The amount used shall not exceed 3 lbs/1000 gals. (0.36 g/L of wine or juice. (GRAS).

[1] GRAS—An acronym for "generally recognized as safe." The term means that the treating material has an FDA listing in title 21, Code of Federal Regulations, part 182 or part 184, or is considered to be generally recognized as safe by advisory opinion issued by the U.S. Food and Drug Administration.
[2] To stabilize—To prevent or to retard unwanted alteration of chemical and/or physical properties.
(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

§ 24.247 Materials authorized for the treatment of distilling material.

The materials listed in this section as well as the materials listed in § 24.246 are approved as being acceptable in good commercial practice for use by proprietors in the treatment of distilling material within the limitations specified in this section: *Provided*, That when the specified use or limitation of any material on this list is determined to be unacceptable by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the material in the treatment of distilling material.

Materials	Use	Reference or limitation
Ammonium phosphate (*mono-* and *di*basic	Yeast nutrient in distilling material	The amount used shall not exceed 10 lbs/1000 gals. (1.2 g/L). 21 CFR 184.1141 (GRAS).[1] See footnote below.
Benzoic acid, potassium and sodium salts of benzoic acid.	To prevent fermentation of the sugar in wine being accumulated as distilling material.	The amount used shall not exceed 0.1% (w/v) as benzoic acid. GRAS per FDA advisory opinions dated 9/22/82 and 9/8/83. 21 CFR 184.1021 and 184.1733 (GRAS).
Enzyme activity		The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
Carbohydrase (*alpha*-Amylase)	To convert starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from *Aspergillus niger*, *Aspergillus oryzae*, *Bacillus subtilis*, or barley malt per FDA advisory opinion of 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Bacillus licheniformis* per 21 CFR 184.1027.
Carbohydrase (*beta*-Amylase)	To convent starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from barley malt per FDA advisory opinion dated 8/18/83.
Carbohydrase (Glucoamylase, Amyloglucosidase).	To convent starches to fermentable carbohydrates.	The amylase enzyme actvity shall be derived from *Aspergillus niger* or *Aspergillus oryzae* per FDA advisory opinion dated 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Rhizopus niveus* per 21 CFR 173.110.
Copper sulfate	To eliminate hydrogen sulfide and mercaptans.	The finished brandy or wine spirits produced from distilling material to which copper sulfate has been added shall not contain more than 2 parts per million (2 mg/L) residual copper. GRAS per FDA advisory opinion of 7/23/69.
Hydrogen peroxide	To reduce the bisulfite aldehyde complex in distilling material.	The amount used shall not exceed 200 parts per million. 21 CFR 184.1366 (GRAS).
Potassium permanganate	Oxidizing agent	The finished brandy or wine spirits produced from distilling material to which potassium permanganate has been added must be free of chemical residue resulting from such treatment. (GRAS)
Sodium hydroxide	Acid neutralizing agent	The finished brandy or wine spirits produced from distilling material to which sodium hydroxide has been added must be free of chemical residue resulting from such treatment. 21 CFR 184.1763 (GRAS).
Sulfuric acid	To effect favorable yeast development in distilling material; to prevent fermentation of the sugar in wine being accumulated as distilling material; to lower pH to 2.5 in order to prevent putrefaction and/or ethyl acetate development.	27 CFR 24.216 (GRAS), 21 CFR 184.1095 (GRAS).

[1] GRAS—An acronym for "generally recognized as safe." The term means that the treating material has an FDA listing in title 21, Code of Federal Regulations, part 182 or part 184, or is considered to be generally recognized as safe by the U.S. Food and Drug Administration.
(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.C.S. 5381, 5382, 5385, 5386, and 5387)).

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

Any process which changes the character of the wine to the extent inconsistent with good commercial practice is not permitted on bonded wine premises. The processes listed in this section are approved as being consistent with good commercial practice for use by proprietors in the production, cellar treatment, or finishing of wine, juice, and distilling material, within the general limitations of this section: *Provided*, That when the specified use or limitation of any process on this list is determined to be unacceptable for use in foods and beverages by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the process in the production, cellar treatment, or finishing of wine, juice, and distilling material.

Processes	Use	Reference or limitation
Elimination of sulfur dioxide by physical process.	To reduce the sulfur dioxide content of juice.	Use of a physical process to remove sulfur dioxide from juice must not alter the basic character of the juice so treated.
Ion exchange	Various applications in the treatment of juice or wine.	Anion, cation, and non-ionic resins, except those anionic resins in the mineral acid state, may be used in batch or continuous column processes as total or partial treatment of wine, provided that with regard to juice or finished wine:
	x	1. Such treatment does not alter the fruit character of the juice or wine. 2. The treatment does not reduce the color of the juice or wine to less than that normally contained in such juice or wine. 3. Treatment does not increase inorganic anions in the juice or wine by more than 10 mg/L. 4. The treatment does not reduce the metallic cation concentration in the juice or wine to less than 300 mg/L. 5. The treatment does not reduce natural or fixed acid in grape wine below 4 g/L for red table wines, 3 g/L for white table wines, 2.5 g/L for all other grape wines, 4 g/L for wine other than grape wine. 6. Treatment does not reduce the pH of the juice or wine to less than pH 3.0 nor increase the pH to more than pH 4.5. 7. The resins used have not imparted to the juice or wine any material or characteristics (incidental to the resin treatment) which may be prohibited under any other section of the regulations in this part. The winemaker may employ conditioning and/or regenerating agents consisting of water, fruit acids common to the wine or juice being treated, and inorganic acids, salts and/or bases provided the conditioned or regenerated resin is rinsed with water until the resin and container are essentially free from unreacted (excess) conditioning or regenerating agents prior to the introduction of the juice or wine. 21 CFR 173.25.
Reverse osmosis	To reduce the ethyl alcohol content of wine.	Permeable membranes which are selective for molecules not greater than 500 molecular weight with transmembrane pressures of 200 psi and greater. The addition of water other than that originally present prior to processing will render standard wine "other than standard." Use shall not alter vinous character.
Thermal gradient processing	To separate wine into low alcohol and high alcohol wine fractions.	The fractions derived from such processing shall retain vinous character. Such treatment shall not increase the alcohol content of the high alcohol fraction to more than 24 percent by volume. The addition of water other than that orginally present in the wine prior to processing, will render standard wine "other than standard."
Thin-film evaporation under reduced pressure.	To separate wine into a low alcohol wine fraction and into a higher alcohol distillate.	Use shall not alter vinous character. Water separated with alcohol during processing may be recovered by refluxing in a closed continuous system and returned to the wine. The addition of water other than that originally present in the wine prior to processing, will render standard wine "other than standard."
Ultra-filtration	To remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; to separate red wine into low color and high color wine fractions for blending purposes.	Permeable membranes which are selective for molecules greater than 500 and less than 25,000 molecular weight with transmembrane pressures which do not exceed 100 psi. Use shall not alter vinous character. 21 CFR 175.300, 177.1520, 177.1550, 177.1630, 177.2440, 177.2600, and 177.2910.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387)).

§ 24.249 Experimentation with new treating material or process.

(a) *General.* The proprietor may, under the provisions of this section, conduct on bonded wine premises such experimentation with a treating material or process as the Director finds may be conducted in a manner that will not jeopardize the revenue, conflict with wine operations, or be contrary to law.

(b) *Application.* The proprietor who desires to conduct experimentation shall file an application with the regional director (compliance) setting forth in detail the experimentation to be conducted and the facilities and equipment to be used. The proposed experimentation will not be conducted until the Director has determined that the conduct of such experimentation will not jeopardize the revenue, conflict with wine operations, or be contrary to law; and the regional director (compliance) has approved the application. Where the Director has determined previously that an experiment may be conducted on bonded wine premises, the regional director (compliance) may approve applications to conduct a similar type of experiment, unless the regional director (compliance) finds that there are particular conditions in respect of the applicant's premises or operations that would cause the conduct of this experiment to be a jeopardy to the revenue or to conflict with wine operations.

(c) *Segregation of operations.* Experimentation authorized under this section will be conducted with the degree of segregation from wine operations as may be required by the regional director (compliance) under the provisions of § 24.27.

(d) *Records.* The proprietor shall, with respect to each experiment authorized by this section, keep records of the kind and quantity of materials received and used and the volume of wine treated and the manner by which disposed.

(e) *Disposition of the wine.* The disposition of the wine subjected to experimental treatment will conform to the conditions stated in the authorization to conduct the experimentation. (Sec. 201, Pub. L. 85–859 (72 Stat. 1383, as amended (26 U.S.C. 5361, 5382))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)

§ 24.250 Application for use of new treating material or process.

(a) *General.* If the proprietor desires to use a material or process which is not specifically authorized in §§ 24.246, 24.247, 24.248, or elsewhere in this part, an application shall be filed with the

regional director (compliance) of the region in which the bonded wine premises is located to show that the proposed material or process is a cellar treatment consistent with good commercial practice.

(b) *Data required.* The application will include the following:

(1) The name and description of the material or process;

(2) The purpose, the manner, and the extent to which the material or process is to be used together with any technical bulletin or other pertinent information relative to the material or process;

(3) A sample, if a proposed material;

(4) Documentary evidence of the U.S. Food and Drug Administration's approval of the material for its intended purpose in the amounts proposed for the particular treatment contemplated;

(5) The test results of any laboratory-scale pilot study conducted by the winemaker in testing the material and an evaluation of the product and of the treatment including the results of tests of the shelf life of the treated wine;

(6) A tabulation of pertinent information derived from the testing program conducted by the chemical manufacturer demonstrating the function of the material or process;

(7) A list of all chemicals used in compounding the treating material and the quantity of each component;

(8) The recommended maximum and minimum amounts, if any, of the material proposed to be used in the treatment and a statement as to the volume of water required, if any, to facilitate the addition of the material or operation of the process; and

(9) Two 750-milliliter samples representative of the wine before and after treatment. Information of a confidential or proprietary nature to the manufacturer or supplier of the treating material or process may be forwarded by the manufacturer or supplier to the Director with a reference to the application filed by the winemaker. Information contained within the winemaker's application can be disclosed to the public, subject to the limitations of 26 U.S.C. 6103 and 7213.

(c) *Use of cellar treatment.* The proprietor may not use the proposed treating material or process until a determination has been made by the Director that the intended use of the material or process is acceptable in good commercial practice. If the regional director (compliance) has been advised by the Director that the use of the material or process has been previously approved, the proprietor will be informed of the approval and of any limitations which will be observed. However, if the regional director (compliance) has not been advised, the application will be forwarded to the Director for a decision regarding the use of the material or process.

(d) *Processing of application.* After evaluation of the data submitted with the application, the Director will make a decision regarding the acceptability of the proposed treatment in good commercial practice. The Director will notify the regional director (compliance) of the approval or disapproval of the application. The regional director (compliance) will then inform the proprietor of the Director's decision. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)

Bottling, Packing, and Labeling of Wine

§ 24.255 Bottling or packing wine.

(a) *General.* Proprietors of a bonded wine premises and a taxpaid wine bottling house premises shall be held strictly responsible for the correct determination of the quantity and alcohol content of wine removed. As required by § 24.170, appropriate and accurate measures and instruments for measuring and testing the wine will be provided at each wine premises.

(b) *Bottle or other container fill.* Proprietors of bonded wine premises and taxpaid wine bottling house premises shall fill bottles or other containers as nearly as possible to conform to the amount shown on the label or blown in the bottle or marked on any container other than a bottle; but in no event may the amount of wine contained in any individual bottle, due to lack of uniformity of the bottles, vary from the amount stated more than 1.0 percent for 15.0 liters and above, 1.5 percent for 1.0 liter to 14.9 liters, 2.0 percent for 750 mL, 3.0 percent for 375 mL, 4.5 percent for 187 mL and 100 mL, and 9.0 percent for 50 mL; and in such case, there will be substantially as many bottles overfilled as there are bottles underfilled for each lot of wine bottled. Short-filled bottles or other containers of wine which are sold or otherwise disposed of by the proprietor to employees for personal consumption need not be labeled, but, if labeled, need not show an accurate statement of net contents.

(c) *Tax tolerance.* The net contents of bottles or other containers of untaxpaid wine in the same tax class filled during six consecutive tax return periods, as determined from the bonded wine premises proprietor's fill test records, shall not vary by more than 0.5 percent from the net contents as stated on the bottles or other containers. The bonded wine premises proprietor is liable for the tax on the entire amount of wine in the same tax class when that wine is removed from bond, without benefit of tolerance, when the fill of bottles or other containers exceeds a 0.5 percent average of a period which consists of six consecutive tax returns, or when filling is not conducted in compliance with good commercial practice.

(d) *Fill tests.* The proprietor shall test at representative intervals wine bottled or packed during the bottling or packing operation of each bottling or packing line to determine if the wine contained in the bottle or other container is in agreement with that stated on the label, bottle, or other container.

(e) *Alcohol tests.* The proprietor shall test the alcohol content by volume to determine the tax class of the wine and to ensure the alcohol content to be stated on the label is in agreement with the requirement of § 24.257. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5368))

(Approved by the Office of Management and Budget under control numbers 1512–0298 and 1512–0503)

§ 24.256 Bottle aging wine.

Wine bottled or packed and stored for the purpose of aging need not have labels affixed until the wine is removed for consumption or sale. However, the bins, pallets, stacks, cases or containers of unlabeled wine will be marked in some manner to show the kind (class and type) and alcohol content of the wine. If the unlabeled wine is stored at a location other than the bottling or packing winery, the registry number of the bottling or packing winery will also be shown. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1407, as amended (26 U.S.C. 5368, 5662))

(Approved by the Office of Management and Budget under control number 1512–0503)

§ 24.257 Labeling wine containers.

(a) The proprietor shall securely affix to each bottle or other container of beverage wine prior to removal for consumption or sale a label showing:

(1) The name and address of the wine premises where bottled or packed;

(2) The brand name (the name and address required by (a)(1) of this section may be the brand name);

(3) The kind of wine. The designation as to kind will be shown as follows:

(i) For wine requiring a label approval under 27 CFR part 4, the class, type, or other designation provided in that part.

(ii) For wine labeled under an exemption from label approval, an

adequate statement of composition may be the designation in lieu of the kind (class and type) stated in 27 CFR part 4.

(iii) For wine with less than 7 percent alcohol by volume, the word "wine" or the words "carbonated wine" if the wine contains more than 0.392 grams of carbon dioxide per 100 milliliters will appear as part of the brand name or in a phrase in direct conjunction with the brand name;

(4) The alcohol content as percent by volume or the alcohol content stated in accordance with 27 CFR part 4. For wine with less than 7 percent alcohol by volume there will be allowed a tolerance of plus or minus 10 percent of the stated alcohol content; and

(5) The net content of the container unless the net content is permanently marked on the container as provided in 27 CFR part 4.

(b) The information shown on any label applied to bottled or packed wine is subject to the recordkeeping requirements of § 24.315. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1407, as amended (26 U.S.C. 5368, 5388, 5662))

(Approved by the Office of Management and Budget under control number 1512–0503)

§ 24.258 Certificates of approval or exemption.

The proprietor shall obtain a certificate of label approval or a certificate of exemption from label approval as required by 27 CFR part 4. (August 29, 1935, ch. 814, Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205))

§ 24.259 Marks.

(a) *Required marks.* Each case or container larger than four liters used to remove wine for consumption or sale will be durably marked to show the following information:

(1) The serial number or filling date as provided in § 24.260;

(2) The name (or trade name) and the registry number of the bottlers wine premises;

(3) The kind (class and type) and the alcohol content of the wine. The kind of wine and alcohol content will be stated in accordance with § 24.257. The formula number will be marked on bulk containers of special natural wine or other wine produced under § 24.218;

(4) The net contents of the case or container larger than four liters in wine gallons or, for cases or containers larger than four liters filled according to metric measure, the contents in liters. If wine is removed in cases, the cases may be marked to show the number and size of bottles or other containers in each case in lieu of the net contents of the case; and

(5) Except for cases, the date of removal or shipment.

(b) *Application of marks.* Required marks may be cut, printed, or otherwise legibly and durably marked upon the case or container larger than four liters, or placed on a label or tag securely affixed to the case or container larger than four liters. Abbreviation of words may be used if the abbreviation is universally understood.

(c) *Location of marks.* Required marks will be placed on a container larger than four liters or on the side of a case for ready examination by ATF officers. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended, 1407, as amended (26 U.S.C. 5368, 5388, 5662))

(Approved by the Office of Management and Budget under control number 1512–0503)

§ 24.260 Serial numbers or filling date.

All cases or containers larger than four liters used for removing wine for consumption or sale are to be marked with a serial number or filling date at the time of filling or when the cases or containers larger than four liters are prepared for removal. Serial numbers will commence with "1" and continue until the numeral "1,000,000" is reached, whereupon the series may recommence with the numeral "1." However, the proprietor may initiate a new series after the numeral "1,000,000" has been reached provided no numeral will be used more than once during a 12-month period. If desired, a separate series of numbers with letter prefixes may be used for containers larger than four liters and for cases, or for cases filled on different bottling lines, or for removals from different loading docks. The proprietor may mark the cases or containers larger than four liters with the filling date in lieu of using a serial number or use both a serial number and the filling date. However, if the proprietor desires to change from the use of a serial number to use of a filling date, or *vice versa*, a notice will be sent to the regional director (compliance) before making the change. Where United States or foreign wine is recased, the cases will be marked with the date of recasing, preceded by the letter "R", in lieu of a serial number of filling date. (72 Stat. 1381; 26 U.S.C. 5367, 5368)

(Approved by the Office of Management and Budget under control number 1512–0503)

Subpart M—Losses of Wine

§ 24.265 Losses by theft.

The proprietor shall be liable for and pay the tax on wine unlawfully removed while on bonded wine premises, or while in transit thereto or therefrom in bond, unless the proprietor or other person responsible for the tax, establishes to the satisfaction of the regional director (compliance) that the theft did not occur as the result of connivance, collusion, fraud or negligence on the part of the proprietor or other person responsible for the tax or the owner, consignor, consignee, bail, or carrier, or their agents or employees. (Sec. 201, Pub. L. 85–859, 72 Stat, 1381, as amended (26 U.S.C. 5370))

§ 24.266 Inventory losses.

(a) *General.* The proprietor shall take a physical inventory of all untaxpaid wine on-hand on bonded wine premises as of the close of business each tax year, or where a cycle different from the tax year has been established as provided in § 24.314, the inventory will be taken annually at the end of that cycle, or at any time required by an ATF officer. The physical inventory of bulk and bottled or packed wine will be recorded and reported as required by § 24.314.

(b) *Bulk wine losses.* The physical inventory of bulk wine will determine losses due to spillage, leakage, soakage, evaporation, and other losses normally occurring from racking and filtering since the previous physical inventory required by this section. A claim for allowance of loss, under the provisions of § 24.65, is required for inventory losses in production or storage:

(1) Where there are circumstances indicating that all or a part of the wine reported lost was unlawfully removed, or

(2) Where the loss on bonded wine premises during the annual period exceeds three percent of the aggregate volume of wine on-hand at the beginning of the annual period and the volume of wine received in bond during the annual period; or the loss exceeds six percent of the still wine produced by fermentation; or the loss exceeds six percent of the sparkling wine produced by fermentation in bottles; or the loss exceeds three percent of the special natural wine produced under § 24.195 or other wine produced under § 24.218; or the loss exceeds three percent of the artificially carbonated wine produced; or the loss exceeds three percent of the bulk process sparkling wine produced.

The percentage applicable to each tax class of wine will be calculated separately, unless the calculation is impracticable because of the mixture of different tax classes by addition of wine spirits or blending during the annual period, in which case the percentage will be calculated on the aggregate volume. Wine removed immediately after production for use as distilling material and on which the usual racking,

clarifying, and filtering losses are not sustained, will not be included in the calculations.

(c) *Bottle and other container wine losses.* Wine filled into a bottle or other similar containers are not subject to losses due to spillage, leakage, soakage, evaporation, and other losses normally occurring from racking and filtering. In addition, wine that has been filled into a bottle or other similar containers can be accurately accounted for and any unexplained shortage is considered evidence of an unreported removal. Therefore, the proprietor shall pay the tax on any unexplained loss of untaxpaid bottled or packed wine disclosed by inventory or otherwise. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5369, 5370))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.267 Losses in transit.

Where the loss in transit of bulk wine shipped in bond or the total daily bulk wine in bond shipments received in bond from the same winery exceeds one percent (two percent on transcontinental shipments) of the volume shipped, the proprietor of the receiving bonded wine premises shall immediately notify the regional director (compliance) or nearest designated ATF officer and file a claim under the provisions of § 24.65. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.268 Losses by fire or other casualty.

The proprietor shall report any loss by fire or other casualty, or any other extraordinary or unusual loss, including a loss by theft, immediately to the regional director (compliance) or nearest designated ATF officer. If required by the regional director (compliance), the proprietor shall file a claim under the provisions of § 24.65. The volume of wine loss will be reported on the ATF F 5120.17 for the month the loss occurred. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

(Approved by the Office of Management and Budget under control number 1512–0492)

Subpart N—Removal, Return and Receipt of Wine

Taxpaid Removals

§ 24.270 Determination of tax.

The tax on wine is determined at the time of removal from a bonded wine premises for consumption or sale. Section 5041 of title 26, United States Code, imposes an excise tax, at the rates prescribed, on all wine (including imitation, substandard, or artificial wine, and compounds sold as wine, which contain 24 percent or less of alcohol by volume) produced in or imported into the United States. Wine containing more that 24 percent of alcohol by volume is classed as distilled spirits and taxed accordingly. The tax is determined and paid on the volume of wine:

(a) In bottles or other containers filled according to United States measure recorded to the nearest 10th gallon; or,

(b) In bottles or other containers filled according to metric measure, on the volume of wine in United States wine gallons to the nearest 10th gallon; or

(c) In the case of pipeline removals, on the volume of bulk wine removed recorded to the nearest whole gallon, five-tenths gallon being converted to the next full gallon. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5041))

§ 24.271 Payment of tax by check, cash, or money order.

(a) *General.* Unless prepaid or no tax is due, the tax on wine is paid by a semi-monthly or annual Excise Tax Return, ATF F 5000.24, which is filed with remittance (check or money order) for the full amount of tax due. Prepayments of tax on wine during the period covered by the return are shown separately on the Excise Tax Return form.

(b) *Return periods.* Except for annual returns filed under the provisions of § 24.273 or where there is no tax due, return periods are from the 1st day of each month through the 15th day of that month, and from the 16th day of each month through the last day of that month. The proprietor shall file returns, with remittances, for each return period not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday. (Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

§ 24.272 Payment of tax by electronic fund transfer.

(a) *General.* (1) During a calendar year any proprietor who is liable for a gross amount of wine excise tax equal to or exceeding $5 million combining tax liabilities incurred under this part and parts 250 and 251 of this chapter, shall during the succeeding calendar year use a financial institution in making payment by electronic fund transfer (EFT) of wine taxes for that year. A proprietor who is required by this section to make remittance by EFT may not effect payment of wine taxes by cash, check, or money order as described in § 24.271.

(2) For the purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including wines brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawback, credit, or refund, for all premises from which the activities are conducted by the proprietor.

(3) For the purposes of this section, a proprietor includes a controlled group of corporations, as defined in 26 U.S.C. 5061 (e)(3). Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50 percent control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(4) A proprietor who is required by this section to make remittances by EFT shall, for each bonded wine premises from which wine is withdrawn upon determination of tax, make a separate EFT remittance and file a separate tax return.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a proprietor already remitting the tax by EFT, each proprietor who was liable during the previous calendar year for a gross amount of wine excise tax equal to or exceeding $5 million, combining tax liabilities incurred under this part and parts 250 and 251 of this chapter, shall give written notice to the regional director (compliance) of each ATF region in which taxes are paid agreeing to make remittances by EFT.

(2) For each return filed in accordance with this subpart, the proprietor shall direct the proprietor's financial institution to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request will be made to the financial institution early enough for the transfer of funds to be made to the Treasury Account by no later than the close of business on the last day for filing the return as prescribed in § 24.271. The request will take into

account any time limit established by the financial institution.

(3) If the proprietor was liable during the preceding calendar year for less than $5 million in wine excise taxes, combining tax liabilities incurred under this part and parts 250 and 251 of this chapter, the proprietor may choose either to continue remitting the tax as provided in this section or to remit the tax with return as prescribed by § 24.271. Upon filing the first return on which the proprietor chooses to discontinue remittance of the tax by EFT and to begin remittance of the tax with the tax return, the proprietor shall notify the regional director (compliance) by attaching a written notification to the tax form stating that no wine excise tax is due by EFT because the tax liability during the preceding calendar year was less than $5 million, and that the remittance will be filed with the tax return.

(c) *Remittance.* (1) The proprietor shall show on the tax return information about remitting the tax for that return by EFT and shall file the return with ATF in accordance with the instructions on the tax form.

(2) Remittances will be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer will be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the proprietor directs the financial institution to effect an electronic fund transfer message as required by paragraph (b) (2) of this section, the transfer data record furnished to the proprietor through normal banking procedures will serve as the record of payment, and will be retained as part of the required records.

(d) *Failure to make a taxpayment by EFT.* The proprietor is subject to a penalty imposed by 26 U.S.C. 5684, 6651, and 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the proprietor an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a proprietor follows when preparing returns and EFT remittances in accordance with this subpart. The United States Customs Service will provide the proprietor with instructions for preparing EFT remittances for payments to be made to the United States Customs Service for payment of excise tax on imported wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

§ 24.273 Exception to filing semi-monthly tax returns.

(a) Any proprietor who has paid wine excise taxes during the previous calendar year in an amount less than $500 may file the Excise Tax Return, ATF F 5000.24, and remittance, if any, within 30 days after the end of the calendar year instead of semi-monthly as required by § 24.271. However, if before the close of the current calendar year the wine excise tax owed will exceed $500 (or at any other subsequent $500 tax interval), the Excise Tax Return with remittance will be filed on the date the tax will exceed $500 and also within 30 days after the end of the calendar year.

(b) A proprietor who files under this section is subject to the failure to pay or file provisions of § 24.274. If there is a jeopardy to the revenue, the regional director (compliance) may deny the exceptions to filing tax returns provided in this section at any time. (Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

(Approved by the Office of Management and Budget under control number 1512–0467)

§ 24.274 Failure to timely pay tax or file a return.

Penalties for failure to pay tax at the time required, for willful refusal to pay the tax and for fraudulent nonpayment of tax are provided for in 26 U.S.C. 5661 and 6656. In addition to these penalties, there is a penalty for the delinquent filing of a tax return, imposed as an addition to the tax shown on the return, amounting to five percent for each month or fraction thereof of the delinquency, not exceeding 25 percent in the aggregate, unless it is shown that the delinquency is due to reasonable cause and not to willful neglect. (Sec. 201, Pub. L. 85–859, 72 Stat. 1407, as amended, 1410, as amended (26 U.S.C. 5661, 5684, 6651, 6656))

§ 24.275 Prepayment of tax.

(a) *General.* The proprietor shall, before removal of wine for consumption or sale, file Excise Tax Return, ATF F 5000.24, with remittance, where:

(1) Required to prepay tax under § 24.276; or,

(2) The tax deferral bond is not in the maximum penal sum and the tax determined and unpaid at any one time exceeds the penal sum of the bond by more than $500; or,

(3) There is no approved tax deferral bond and the total amount of tax unpaid at any one time exceeds $500.

The return with remittance is forwarded pursuant to the instructions printed on the return. For the purpose of complying with this section, the term "forwarding" means deposit in the United States mail properly addressed to ATF.

(b) *Electronic fund transfer.* When the proprietor is required by § 24.272 to deliver payment of tax by electronic fund transfer, the proprietor shall prepay the tax before any wine can be removed for consumption or sale by:

(1) Completing the Excise Tax Return and by mailing it, as instructed on the form, to ATF and

(2) Directing the proprietor's financial institution to effect an electronic fund transfer. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

§ 24.276 Prepayment of tax; proprietor in default.

When the proprietor fails to forward a payment for wine excise tax due by presentment of a check or money order, or when the proprietor is otherwise in default of payment of the tax, no wine may be removed for consumption or sale until the tax has been paid for the period of the default and until the regional director (compliance) finds the revenue will not be jeopardized by the late payment of the tax. Any remittance made during the period of the default will be in cash, or will be in the form of a certified, cashier's, or treasurer's check drawn on any financial institution incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or in the form of a money order, as provided in 27 CFR 70.66 (payment by check or money order) or in the form of an electronic fund transfer. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391 as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

§ 24.277 Date of mailing or delivering of returns.

(a) When the proprietor sends the Excise Tax Return, ATF F 5000.24, with or without remittance, by United States mail, the official postmark of the United States Postal Service stamped on the cover of the envelope in which the return was mailed is considered the date

of delivery of the tax return and, if accompanied, the date of delivery of the remittance. When the postmark on the cover is illegible, it is the proprietor's responsibility to prove when the postmark was made.

(b) When the proprietor sends the tax return by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, is treated at the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

Transfer of Wine in Bond

§ 24.280 General.

Wine may be removed for transfer in bond, from one bonded wine premises to another bonded wine premises or to a distilled spirits plant. For bulk wine transferred in bond between adjacent or contiguous bonded wine premises or to an adjacent or contiguous distilled spirits plant, an accurately calibrated tank for measuring the wine is required on at least one of the premises. The volume of wine transferred will be recorded to the nearest whole gallon, five-tenths gallon being converted to the next full gallon. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

§ 24.281 Consignor premises.

Prior to transferring wine in bond, the proprietor shall prepare a transfer record prescribed by § 24.309. Except for multiple transfers as provided in § 24.282, a transfer record will be prepared for each shipment. On completion of lading (or completion of transfer by pipeline), the proprietor shall retain one copy of the transfer record for the files and forward the original to the consignee (to accompany the shipment, if by truck). (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362)

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.282 Multiple transfers.

(a) *Truck.* The proprietor may use one transfer record for all wine shipped by truck on the same day to other premises. The proprietor shall prepare a shipment or delivery order for each shipment showing date of transfer, name and address of the proprietor and consignee, number of cases or containers, serial numbers of cases (if any) or container identification marks, and quantity shipped in gallons or liters. A copy of the shipping or delivery order will be retained by the proprietor and a copy sent with the shipment. On completion of lading the last truck for the day, the proprietor shall prepare and process a transfer record as provided in § 24.281.

(b) *Pipeline.* The proprietor may use one transfer record for all wine (including distilling material and vinegar stock) transferred by pipeline to adjacent premises during a month. At the end of the month, the proprietor shall prepare and process a transfer record as provided in § 24.281. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C 5362))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.283 Reconsignment.

Prior to or on arrival at the premises of a consignee, wine transferred in bond may be reconsigned by the consignor. The bond of the proprietor to whom the wine is reconsigned will cover the wine while in transit after reconsignment. Notice of cancellation of the shipment will be made to the other proprietors involved by the proprietor who reconsigned the wine. Where reconsignment is to other than the shipping proprietor, a new transfer record prominently marked "Reconsignment" will be prepared and processed as provided by § 24.281. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C 5362))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.284 Consignee premises.

When wine is received by transfer in bond, the consignee shall check the shipment against the transfer record and determine by volumetric measure or weight the quantity received. The date received and, if different from the quantity shipped, the quantity received will be recorded on the transfer record. See § 24.267 for provisions applicable to losses in transit. Sealed containers or cases received without apparent loss need not be measured or weighed. The consignee will retain the original of the transfer record and any accompanying documents. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

(Approved by the Office of Management and Budget under control number 1512–0298)

Removals Without Payment of Tax

§ 24.290 Removal of wine as distilling material.

(a) *General.* Still wine may be removed without payment of tax to the production facilities of a distilled spirits plant for use as distilling material. The volume of distilling material may be determined at either the bonded wine premises or the distilled spirits plant.

(b) *Special natural wine.* Unmarketable special natural wine may be removed to a distilled spirits plant for use as distilling material in the production of wine spirits (but not brandy). Where sugar has been used in the production of special natural wine, the wine may not be removed for use as distilling material if the unfermented sugars therein have been fermented prior to the removal. If wine spirits produced from special natural wine contain any flavor characteristics of the special natural wine, the wine spirits may be used only in the production of a special natural wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended, 1395, as amended (26 U.S.C. 5362, 5373, 5552))

§ 24.291 Removal of wine for vinegar production.

(a) *General.* Still wine may be removed from bonded wine premises, without payment of tax, for use in the manufacture of vinegar. Where the proprietor is also the proprietor of a vinegar plant located adjacent or contiguous to the bonded wine premises, wine may be removed without payment of tax upon filing a consent of surety extending the terms of the wine bond to cover the removal and use of wine in the manufacture of vinegar. Where the proprietor of a vinegar plant is not the proprietor of an adjacent or contiguous bonded wine premises, the proprietor of the vinegar plant may receive wine, without payment of tax, for use in the manufacture of vinegar by filing a bond under the provisions of § 24.146(c) to cover the removal to and use of wine at the vinegar plant.

(b) *Vinegar plant records.* Each proprietor of a vinegar plant to which wine is shipped, without payment of tax, for use in the manufacture of vinegar shall keep a record of all wine received and used for the manufacture of vinegar and of all vinegar produced and disposed of. The record will show the following information:

(1) The volume and alcohol content of all wine received, the date of receipt, and the name, registry number, and address of the bonded wine premises from which received;

(2) The volume and alcohol content of all wine used in the manufacture of vinegar, and the date of use;

(3) The volume and grain strength of the vinegar produced, and the date of production. (This volume will be reported on a 100-grain strength basis and will be determined by multiplying

the wine gallons of vinegar produced by the grain strength thereof and dividing the result by 100); and

(4) The names and addresses of all persons to whom vinegar is shipped, the volume and grain strength shipped to each, and the date of shipment. (Grain strength is a measure of the acetic acid content of vinegar, expressed as 10 times the grams of acetic acid per 100 mL).

(c) *Inspection of vinegar plants.* The proprietor of a vinegar plant receiving wine, without payment of tax, for use in the manufacture of vinegar shall make the premises and records available for inspection by ATF officers during regular business hours. (August 16, 1954, ch. 736, 68A Stat. 903, as amended (26 U.S.C. 7606); Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

(Approved by the Office of Management and Budget under control numbers 1512–0058, 1512–0292 and 1512–0298)

§ 24.292 Exported wine.

(a) *General.* Wine may be removed from a bonded wine premises without payment of tax for exportation, for use on vessels and aircraft, for transportation to and deposit in a "Class 6" manufacturing bonded warehouse, for transfer to and deposit in a customs bonded warehouse, and for transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation. Removals of wine for export will be in accordance with the procedures in part 252 of this chapter.

(b) *Return of wine to bonded storage.* Wines which have been lawfully withdrawn, without payment of tax, under the provisions of part 252 of this chapter may be returned to bonded wine premises from which withdrawn for storage pending subsequent removal for lawful purposes. On return of wine to bonded wine premises, the proprietor shall record the receipt showing the gallonage of each tax class received and returned to storage on bonded wine premises and shall report the return on the ATF F 5120.17, Monthly Report of Wine Cellar Operations, for the month with an explanatory notation. All provisions of this part applicable to wine in bond at bonded wine premises and to removals from bond are applicable to returned wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

§ 24.293 Wine for Government use.

(a) *General.* Wine may be removed from bonded wine premises, free of tax, for use of the Government of the United States, or any agency thereof, upon receipt of a proper Government order signed by the officer in charge of the department, institution, station, or similar establishment, to which the wine is to be shipped or other officer duly authorized to sign the order. The governmental order will show the kind, quantity and alcohol content of the wine desired; and the purpose for which the wine is to be used. Wine may also be removed for use by the governments of the several states and the District of Columbia, or of any subdivision thereof, or by any agency of the governments, free of tax, from bonded wine premises for analysis, testing, research or experimentation.

(b) *Bill of lading and report of shipment.* Where wine is shipped by common carrier, the proprietor shall retain a copy of the bill of lading, covering the shipment, with the ATF F 5120.17, Monthly Report of Wine Cellar Operations, for the month in which the shipment is made. The bill of lading will show the name and address of the agency to which the wine is shipped, identifying marks on containers or cases, and alcohol content of the wine. The governmental order, or a copy of the order, will be filed at the bonded wine premises available for inspection by ATF officers. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended (26 U.S.C. 5362, 5367))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

§ 24.294 Destruction of wine.

(a) *General.* Wine on bonded wine premises may be destroyed on or off wine premises by the proprietor without payment of tax. A proprietor who desires to destroy wine on or off wine premises shall file with the area supervisor an application stating the kind, alcohol content, and approximate volume of wine to be destroyed, where the wine is to be destroyed, and the reason for destruction. Wine to be destroyed will be inspected and the destruction supervised by an ATF officer, unless the area supervisor authorizes the proprietor to destroy the wine without inspection and supervision. The wine may not be destroyed until the proprietor has received authority from the area supervisor.

(b) *Record of destruction.* The proprietor shall maintain a record of the volume destroyed and include the quantity on the ATF F 5120.17, Monthly Report of Wine Cellar Operations. If part of the volume of the material destroyed is not wine, the volume destroyed will be reported on the basis of actual wine content of the material, excluding any dilution by water or other substance. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5370))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

Return of Taxpaid Wine to Bond

§ 24.295 Return of taxpaid wine to bond.

(a) *General.* Wine produced in the United States which has been taxpaid, removed from bonded wine premises, and subsequently determined to be unmerchantable may be returned to bonded wine premises for reconditioning, reformulation or destruction. The tax paid on United States wine may, when such wine is returned to bond, be refunded or credited, without interest, to the proprietor of the bonded wine premises to which such wine is delivered. However, no tax paid on any United States wine for which a claim has been or will be made under the provisions of subpart O of part 170 of this chapter will be refunded or credited. If the tax on the United States wine has been determined but not paid, the person liable for the tax may, when such wine is returned to bond, be relieved of the liability. Claims for refund or credit, or relief from of tax paid or determined on United States wine returned to bond are filed in accordance with § 24.66.

(b) *Receipt.* The amount of unmerchantable taxpaid United States wine returned to bond is determined upon receipt on bonded wine premises. The quantity determined will be entered on the ATF F 5120.17, Monthly Report of Wine Cellar Operations, for the month during which the United States wine is returned.

(c) *Records.* The proprietor shall maintain records covering each lot of unmerchantable taxpaid wine returned to bond in accordance with § 24.311. (Sec. 201, Pub. L. 85–859, 72 Stat. 1332, as amended, 1382, as amended (26 U.S.C. 5044, 5371))

(Approved by the Office of Management and Budget under control numbers 1512–0216, 1512–0298 and 1512–0492)

Taxpaid Wine Operations

§ 24.296 Taxpaid wine operations.

(a) *General.* The proprietor may conduct taxpaid wine operations authorized by § 24.102 in an area designated as a taxpaid wine premises at a bonded wine premises or at a

taxpaid wine bottling house. Taxpaid foreign wine may be received on the taxpaid wine premises for reconditioning and removal without retaxpayment or for destruction without credit of tax. Any taxpaid wine operations will be separate from all nontaxpaid wine operations and taxpaid wine will be clearly identified as provided in § 24.135. The regional director (compliance) may require any additional segregation and identification of taxpaid wine operations as deemed necessary to protect the revenue.

(b) *Treatment and blending.* Taxpaid wine may be treated with sulfur dioxide compounds, refrigeration or pasteurization and may also be preserved, filtered or clarified by the use of methods or materials which will not change the basic character of the wine. Water may not be added to taxpaid wine. The proprietor who desires to treat wine in any manner (other than by simple filtration or the use of sulfur compounds, refrigeration or pasteurization) shall first file with the regional director (compliance) an application giving the details of the proposed treatment. The proprietor may not use the treatment prior to approval. The proprietor may incur civil or criminal liability for using an unauthorized treatment of untaxpaid wine. Wine of the same kind (class and type), national origin and tax class may only be mixed to facilitate handling at a taxpaid wine bottling house; otherwise, the blending of taxpaid wine on such premises is prohibited. Taxpaid wine of different national origins, but of the same kind and tax class, may only be blended on taxpaid wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1407 (26 U.S.C. 5352, 5661))

Subpart O—Records and Reports

§ 24.300 General.

(a) *Records and reports.* A proprietor who conducts wine operations shall maintain wine transaction records and submit reports as required by this part. Transaction records may be recorded in wine gallons or in liters. However, required reports submitted to the regional director (compliance) will show wine volumes in wine gallons. The equivalent wine gallons of wine bottled or packed and labeled according to metric measure will be determined using the following conversion factors:

(1) *Per case.* Equivalent gallonage may be determined using the following conversion factors for cases of metric bottles:

Bottles per case	Net content each bottle	Equivalent gallonage
120	50 mL	1.58502
60	100 mL	1.58502
48	187 mL	2.37119
24	375 mL	2.37753
12	750 mL	2.37753
12	1 liter	3.17004
6	1.5 liter	2.37753
4	3 liter	3.17004

(2) *Per liter.* Equivalent gallonage may be determined by multiplying total liters by a conversion factor of 0.26417 gallons per liter.

(b) *Time of making entries.* Any operation or transaction is to be entered in records or commercial papers at the time the operation or transaction occurs, except that where records are posted from source records or from supplemental auxiliary records prepared at the time the operation or transaction occurs, entries in another record may be deferred to not later than the close of business of the third business day succeeding the day on which the operation or transaction occurs. The proprietor shall retain all source records and all supplemental or auxiliary records which support entries in other records or commercial papers in order to facilitate verification of operations by ATF officers. Source records and supplemental or auxiliary records may be used as the record of an operation or transaction and to prepare the ATF F 5120.17, Monthly Report of Wine Cellar Operations, provided the record will readily allow for verification of an operation or transaction by ATF officers.

(c) *Prescribed forms.* All reports required by this part are to be submitted on forms prescribed by the Director. Entries will be made as indicated by the headings of the columns and lines and as required by the instructions on the form. Report forms filed with the regional director (compliance) are furnished free of cost.

(d) *Period of retention.* All prescribed returns, reports and records (including source records) will be retained by the proprietor for a period of not less than three years from the record date or the date of the last entry required to be made in the record, whichever is later. However, the regional director (compliance) may require records to be kept an additional period not exceeding three years in any case where retention is determined to be necessary.

(e) *Data processing.* (1) Notwithstanding any other provision of this section, data maintained on data processing equipment may be kept at a location other than the wine premises if the original operation or transaction source records required by this subpart are kept available for inspection at the wine premises.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted recording media will be retrievable within five business days.

(3) The applicable data processing program will be made available for examination if requested by an ATF officer.

(f) *Photographic copies of records.* The proprietor may record, copy, or reproduce records required by this part and may use any process which accurately reproduces the original record and which forms a durable medium for reproducing and preserving the original record. Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this paragraph, "original record" means the record required to be maintained or preserved by the proprietor, even though it may be an executed duplicate or other copy of the document.

(g) *ATF F 5120.17, Monthly Report of Wine Cellar Operations.* A proprietor who conducts bonded wine operations shall summarize transaction entries and submit an ATF F 5120.17 to the regional director (compliance) in accordance with instructions on the form. If the proprietor does not expect an inventory change or any reportable operations to be conducted in a subsequent month or months, a statement may be attached to the ATF F 5120.17 filed that, until a change in the inventory or a reportable operation occurs, an ATF F 5120.17 will not be filed. The information reported on the ATF F 5120.17 will be maintained in accordance with the requirements of this part. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

§ 24.301 Bulk still wine record.

A proprietor who produces or receives still wine in bond, (including wine intended for use as distilling material or vinegar stock to which water has not yet been added) shall maintain records of transactions for bulk still wine. Records

will be maintained for each tax class of still wine including the date the transaction occurred. The bulk still wine record will contain the following:

(a) The volume produced by fermentation in wine gallons determined by actual measurement;

(b) The volume received, shipped taxpaid, removed (e.g., taxpaid, in bond, export, family use, samples) and used in sparkling wine production;

(c) The specific type of production method used, e.g., natural fermentation, chaptalization, amelioration, sweetening, addition of spirits, blending;

(d) The volume of wine used and produced by amelioration, addition of spirits or sweetening, as determined by measurements of the wine before and after production.

(e) The volume of wine used for and produced by blending, if wines of different tax classes are blended together;

(f) The volume of wine used to produce formula wine, vinegar stock and distilling material;

(g) The volume of wine removed to fermenters for refermentation or removed directly to the production facilities of a distilled spirits plant or vinegar plant;

(h) Where a process authorized under § 24.248 is employed, records will be maintained to allow for verification of any limitation specified for the process employed and to ensure that the use of the process is consistent with good commercial practice;

(i) Where a treating material is dissolved or dispersed in water as authorized in this part, the volume of water added to the wine; and

(j) An explanation of any unusual transaction. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.302 Effervescent wine record.

A proprietor who produces or receives sparkling wine or artificially carbonated wine in bond shall maintain records showing the transaction date and details of production, receipt, storage, removal, and any loss incurred. Records will be maintained for each specific process used (bulk or bottle fermented, artificially carbonated) and by the specific kind of wine, e.g., grape, pear, cherry. The record will contain the following:

(a) The volume of still wine filled into bottles or pressurized tanks prior to secondary fermentation or prior to the addition of carbon dioxide;

(b) The quantity of any first dosage used;

(c) Any in-process bottling losses, e.g., refilling, spillage, breakage;

(d) The volume of bottle fermented sparkling wine in process, transferred and received;

(e) The volume returned to still wine;

(f) The quantity of any finishing dosage used;

(g) The volume of finished sparkling wine or artificially carbonated wine bottled or packed (amount produced);

(h) The quantity of each item used in the production of dosages, e.g., wine, sugar, spirits; and

(i) An explanation of any unusual transaction. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.303 Formula wine record.

A proprietor who produces beverage formula wine shall maintain records showing by transaction date the details of production. The formula wine record will contain the following:

(a) A number for each lot produced;

(b) The approved formula number for each lot;

(c) The volume of wine used in the production;

(d) The volume produced and the gain or loss resulting from the production of each lot as determined by comparing the volume finished with the volume used (report the total monthly loss or gain on the ATF F 5120.17);

(e) An explanation of any unusual loss or gain;

(f) The production of essences showing the formula number, quantities of spirits and herbs used, and the amount produced;

(g) The quantity of essences purchased, and the use, transfer or other disposition of essences produced or purchased; and

(h) A record of the receipt and use or other disposition of all herbs, aromatics, essences, extracts, or other flavoring materials used in the production of formula wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control numbers 1512–0059, 1512–0216 and 1512–0298)

§ 24.304 Chaptalization (Brix adjustment) and amelioration record.

(a) *General.* A proprietor who chaptalizes juice or ameliorates juice or wine, or both, shall maintain a record of the operation and the transaction date. Records will be maintained for each kind of wine produced (grape, fruit, or berry). No form of record is prescribed, but the record maintained will contain the information necessary to enable ATF officers to readily determine compliance with chaptalization and amelioration limitations. All quantities will be recorded in wine gallons, and, where pure dry sugar is used, the quantity will be determined either by measuring the increase in volume or by considering that each 13.5 pounds of pure dry sugar results in a volumetric increase of one gallon. If grape juice is chaptalized and subsequently this juice or wine is ameliorated, the quantity of pure dry sugar added to juice will be included as ameliorating material. The record will include the following:

(1) The volume of juice (exclusive of pulp) deposited in fermenters;

(2) The maximum volume of ameliorating material to which the juice is entitled, as provided in § 24.178;

(3) The volume of ameliorating or chaptalizing material used; and

(4) The volume of material authorized but not yet used.

(b) *Supporting records.* The amelioration record will show the basis for entries and calculations, including determination of the natural fixed acid level and total solids content of juice, as applicable. The records are maintained on the basis of annual accounting periods, with each period commencing on July 1 of a year and ending on the following June 30, except the record for an accounting period may be continued after June 30, where the juice or wine included therein is to be held after that date for completion. When the amelioration of wine included in the record for one accounting period is complete, the record is closed and any unused ameliorating material may not be used. The proprietor may mix wines before amelioration of the wine is completed; however, the proprietor shall additionally maintain records necessary to establish the quantity of unused authorized material to which the resultant mixture would be entitled so that ATF officers may readily ascertain compliance with amelioration limitations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended 1385, as amended (26 U.S.C. 5367, 5384))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.305 Sweetening record.

A proprietor who sweetens natural wine with sugar or juice (unconcentrated or concentrated) under the provisions of this part shall maintain a record of sweetening by transaction date. The record will contain the following:

(a) The gallons and degrees Brix of the wine before sweetening;

(b) If concentrate is used, the degrees Brix of the concentrate;

(c) If sugar or juice, or both, are used, the gallon equivalent that would be required to sweeten the volume of wine to its maximum authorized total solids content;

(d) The quantity of sugar or juice used for sweetening; and

(e) The gallons and degrees Brix of the wine produced by sweetening. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.306 Distilling material or vinegar stock record.

A proprietor who produces or receives wine containing excess water which will be used expressly as distilling material or vinegar stock shall maintain a record by transaction date showing the amount and kind produced, received, from whom received, removed, and to whom sent. The proprietor shall keep a record of each type of material from which the distilling material or vinegar stock was fermented (e.g., grape, fruit, berry). The volume of distilling material or vinegar stock produced, including wine lees refermented for use as distilling material, will be recorded upon removal from fermenting tanks. However, the provisions of this section do not apply to standard wine or unwatered wine lees recorded on the proprietor's record of bulk still wine and removed for use as distilling material or vinegar stock. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.307 Nonbeverage wine record.

A proprietor who produces nonbeverage wine or wine products shall maintain a record by transaction date of such wine produced, received and withdrawn as follows:

(a) The kind, volume, and percent alcohol by volume of wine or wine products made from wine, which was rendered unfit for beverage use;

(b) The kind and quantity of materials received and used to render wine, or wine products made from wine, unfit for beverage use;

(c) The name, volume, percent alcohol by volume, and formula number, if produced under a formula, of each nonbeverage wine or wine product produced;

(d) The volume, percent alcohol by volume, and formula number, if applicable, of the nonbeverage wine or wine products received;

(e) The volume, percent alcohol by volume, and formula number, if applicable, of the nonbeverage wine or wine products removed;

(f) The name and address of the person to whom removed; however, on any individual sale of less than 80 liters the name and address of the purchaser need not be recorded; and

(g) In the case of vinegar production, the acetic acid and ethyl alcohol content of the vinegar.

When the proprietor sends nonbeverage wine or wine products free of tax to an adjacent or contiguous premises operated by the proprietor, records required by Paragraphs (e) and (g) of this section will be maintained at each location. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.308 Bottled or packed wine record.

A proprietor who bottles, packs, or receives bottled or packed beverage wine in bond shall maintain a record, by tax class, as follows:

(a) The date, kind of wine, the number and size of bottle or other container filled (if not available in another record), and volume of wine bottled or packed, received in bond, returned to bond, and removed, e.g., taxpaid removals, in bond removals, dumped to bulk or destroyed, breakage, used for tasting. The volume recorded as bottled for bottle fermented sparkling wine is determined after the disgorging and refilling process.

(b) The label used on bottles or other containers will be shown in the record by using the "Applicant's Serial No." which appears as item 2 on the label approval form, ATF F 5100.31 or a similar system which will allow for verification of labels used on bottles or containers.

(c) The record of fill tests and alcohol tests required by § 24.255 will be maintained for each lot of wine bottled or packed, or for each bottling or packing line operated each day, showing the date, type of test, item tested and the test results. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.309 Transfer in bond record.

A proprietor who transfers wine in bond shall prepare a transfer record. The transfer record will show:

(a) The name, address and registry number of the proprietor;

(b) The name, address and registry number of the consignee;

(c) The shipping date;

(d) The kind of wine (class and type);

(e) The alcohol content or the tax class;

(f) The number of cases or containers larger than four liters;

(g) The serial numbers of cases (if any) or containers larger than four liters;

(h) Any bulk container identification marks;

(i) The volume shipped in gallons or liters;

(j) The serial number of any seal used;

(k) For unlabeled bottled or packed wine, the registry number of the bottler or packer;

(l) Information necessary for compliance with § 24.315, e.g., the varietal, vintage, appellation of origin designation of the wine or any other information that may be stated on the label; and

(m) Information as to any added substance or cellar treatment for which a label declaration is required for the finished product, or any other cellar treatment for which limitations are prescribed in this part, e.g., amount of decolorizing material used and kind and quantity of acid used. (Sec 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.310 Taxpaid removals from bond record.

A proprietor removing wine from bond for consumption or sale on determination of tax shall maintain a record of wine removed at the time of removal either to taxpaid wine premises, taxpaid wine bottling house premises, or for direct shipment. The record will show the date of removal, the name and address of the person to whom shipped, and the volume, kind (class and type), and alcohol content of the wine. However, on any individual sale of less than 80 liters, the name and address of the purchaser need not be recorded. The proprietor who removes taxpaid bulk wine to another wine premises shall prepare the shipping record and follow the procedures prescribed by § 24.281. The volume of wine removed taxpaid will be summarized daily by tax class. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.311 Taxpaid wine record.

A proprietor who has taxpaid United States or foreign wine on taxpaid wine premises or on taxpaid wine bottling house premises shall maintain records as follows:

(a) *Record of receipts.* (1) The name and address of the person or wine premises from whom received;

(2) The registry number (if any) of the wine premises from which received;

(3) The date of receipt;

(4) The kind of wine (class, type and, in the case of foreign wine, country of origin);

(5) Alcohol content or tax class of the wine; and,

(6) The volume of wine received in gallons.

(b) *Record of removals.* (1) The name and address of the person to whom removed; however, on any individual sale of less than 80 liters, the name and address of the purchaser need not be recorded;

(2) The date of removal;

(3) The kind of wine (class, type and, in the case of foreign wine or a blend of United States and foreign wine, country of origin); and

(4) The volume of wine shipped in gallons.

(c) *Record of cases or containers filled.* (1) The date the cases or containers were filled;

(2) The kind (class, type, and in the case of foreign wine or a blend of United States and foreign wine, country of origin) of wine bottled or packed;

(3) The number of the tank used to fill the bottles or other containers;

(4) The size of bottles or other containers and the number of cases or containers filled;

(5) The serial number or date of fill marked on the cases or containers filled; and

(6) The total volume of wine bottled or packed in liters or wine gallons. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367)).

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.312 Taxpaid wine returned to bond record.

A proprietor shall maintain a record of any unmerchantable taxpaid wine returned to bond as follows:

(a) The kind, volume, and tax class of the wine;

(b) With regard to each tax class, the amount of tax previously paid or determined;

(c) The location of the wine premises at which the wine was bottled or packed and, if known, the identity of the bonded wine premises from which removed on determination of tax;

(d) The date the wine was returned to bond;

(e) The serial numbers or other identifying marks on the cases or containers in which the wine was received; and

(f) The final disposition of the wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.313 Inventory record.

A proprietor shall prepare a record of the physical inventory of all wine and spirits in storage at the close of business for each tax year, or where a different cycle has been established, the inventory will be taken at the end of that annual period. (Proprietors may begin with an annual inventory period different from the period beginning on July 1 and ending on June 30 (tax year)); however, if the proprietor wants to change an inventory period, a notice will be submitted to the regional director (compliance). The inventory record will be retained on file with the proprietor's ATF F 5120.17, Monthly Report of Wine Cellar Operations, for the month the inventory was taken. If at other times a complete inventory of all wine is taken, losses disclosed will be reported on the ATF F 5120.17 and the inventory record will also be retained on file with the report for that month. The proprietor's inventory record will include:

(a) *Description of wine.* (1) State the generic name (e.g., port, claret) or designate as a white, rose or red table or dessert wine; or

(2) Wine intended to be marketed with a vintage date, varietal name, or geographical designation will be appropriately identified, e.g., 1977 Napa Valley Pinot Noir; and

(3) If the wine is other than grape wine, state the type, e.g., orange, honey.

(b) *Bulk containers.* Tanks containing wine will be listed by tank number. Bulk containers which are barrels or puncheons containing the same kind of wine may be summarized, e.g., 10 barrels—red table wine 500 gals.;

(c) *Cases, bottles and other similar containers.* The total volume of one kind of wine in cases, bottles and similar containers may be entered as one item and appropriately identified;

(d) *Inventory summary.* The volume of bulk and bottled or packed wine will be totaled separately in wine gallons or in liters, by tax class, and reported on the ATF F 5120.17. Spirits will also be totaled and reported on the ATF F 5120.17; and

(e) *Inventory record.* All inventory pages will be numbered consecutively and the last inventory page will be dated and signed after the statement, "Under penalties of perjury, I declare that I have examined this inventory record and to the best of my knowledge and belief, it is a true, correct and complete record of all wine and spirits required to be inventoried." (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5369))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

§ 24.314 Label information record.

A proprietor who removes bottled or packed wine with information stated on the label (e.g., varietal, vintage, appellation of origin, analytical data, date of harvest) shall have complete records so that the information appearing on the label may be verified by an ATF audit. A wine is not entitled to have information stated on the label unless the information can be readily verified by a complete and accurate record trail from the beginning source material to removal of the wine for consumption or sale. All records necessary to verify wine label information are subject to the record retention requirements of § 24.300(d). (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.315 Materials received and used record.

(a) *General.* A proprietor who produces wine shall maintain a record showing the receipt and use or other disposition of basic winemaking materials received on wine premises. The record will show the date of receipt, the quantity received, the name and address from whom received, and the date of use or other disposition of the materials. For any material stored off wine premises, invoices or other commercial papers covering the purchase will also be kept available for inspection. Where grapes (or other fruit) received on wine premises are used in producing juice to be stored for future use or for removal, the record will show the quantity used and juice produced.

(b) *Concentrated fruit juice.* When concentrated fruit juice or must is produced or received, the record will show the degrees Brix of the juice before and after concentration, the volume of juice before and after reconstitution, the volume of reconstitution water used for each dilution of the concentrate, and, if volatile fruit flavor was added, the kind and volume. Where fruit or juice is used to produce concentrated juice, the record will also show the quantity of fruit or volume of juice used. If the concentrated fruit juice is removed for use by another proprietor, a copy of the certificate required by § 24.180 will be retained. The record of concentrated fruit juice will contain the information necessary to determine compliance with

the limitations prescribed in § 24.180. Incomplete or inaccurate records of concentrated fruit juice may result in the wine produced from the concentrated fruit juice to be designated substandard.

(c) *Volatile fruit-flavor concentrate.* If volatile fruit-flavor concentrate is received, the record will show the volume received, the fold, the percent of alcohol by volume, any loss in transit, and the use or other disposition of the volatile fruit-flavor concentrate. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.316 Spirits record.

A proprietor who receives, stores, or uses spirits shall maintain a record of receipt and use. The record will show the date of receipt, from whom received, and the kind and proof gallons. The spirits record will also show by date and proof gallons the spirits used or removed from bonded wine premises and to whom. The proof gallons of spirits received, used, removed from bonded wine premises, and on hand will be summarized and the account balanced at the end of each month and reported on the ATF F 5120.17. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended (26 U.S.C. 5367, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

§ 24.317 Sugar record.

A proprietor who receives, stores, or uses sugar shall maintain a record of receipt and use. The record will show the date of receipt, from whom received, and the kind and quantity. Invoices covering purchases will be retained. When sugar is used for chaptalization (Brix adjustment), amelioration or sweetening, the record will show the date, kind, and quantity used. The sugar record will also show sugar used in the production of allied products and any sugar removed from the wine premises. At the close of each month the account will be balanced and the quantity of each kind of sugar remaining on hand will be shown. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.318 Acid record.

A proprietor who adds acid to correct a natural deficiency in juice or wine or to stabilize wine shall maintain a record showing date of use, the kind and quantity of acid used, the kinds and volume of juice or wine in which used, and, when used to correct natural deficiency, the fixed acid level of juice or of wine before and after the addition of acid. The record will account for all acids received and be supported by purchase invoices. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.319 Carbon dioxide record.

A proprietor who uses carbon dioxide in still wine shall maintain a record of the laboratory tests conducted to establish compliance with the limitations prescribed in § 24.245. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.320 Chemical record.

A proprietor who uses chemicals, preservatives, or other such materials shall maintain a record of the purchase, receipt and disposition of these materials. The record will show the kinds and quantities received, the date of receipt, and the names and addresses from whom purchased. A record of use in juice or wine of any of these materials, except for filtering aids, inert fining agents, sulfur dioxide, carbon dioxide (except as provided in § 24.320), nitrogen and oxygen, will be maintained, showing the kind, quantity, and date of use, and kind and volume of juice or wine in which used. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.321 Decolorizing material record.

A proprietor who treats juice or wine to remove excess color with activated carbon or any other decolorizing material shall maintain a record to show:

(a) The date the decolorizing material is added to the juice or wine;

(b) The type (e.g. grape variety or kind of wine) and volume of juice or wine treated with decolorizing material; and

(c) The kind and quantity of decolorizing material used to treat the juice or wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298).

§ 24.322 Allied products record.

A proprietor who uses fruit, fruit juice or concentrated fruit juice in the production of allied products shall maintain a record of these materials in accordance with § 24.315. The record will also show the production and disposition of other allied products. If sugar, acids, or chemicals are used in allied products, the receipt and use will also be recorded. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.323 Excise Tax Return form.

A proprietor who removes wine subject to tax shall prepare an ATF F 5000.24, Excise Tax Return, unless exempted under the provisions of § 24.273. Any increase or decrease in tax due to previous return errors or for authorized credits will be shown on the return. The ATF F 5000.24 will be prepared and filed by the proprietor in accordance with the instructions printed on the form. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended, 917, as amended (26 U.S.C. 5061, 7805))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

PART 252—[AMENDED]

Par. 18. The authority citation for part 252 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5173, 5175–5177, 5204–5207, 5214, 5223, 5301, 5326, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

§ 252.3 [Amended]

Par. 19. Section 252.3 is amended by removing the reference 27 CFR Part 231—Taxpaid Wine Bottling Houses and by replacing the reference "27 CFR Part 240—Wine" with "27 CFR Part 24—Wine" and placing it in numerical order.

§ 252.59 [Amended]

Par. 20. Section 252.59 is amended by replacing the reference "part 240" with "part 24."

§ 252.123 [Amended]

Par. 21. Section 252.123(a) is amended by replacing the reference "part 240" with "part 24."

§ 252.126 [Amended]

Par. 22. Section 252.126 is amended by replacing the reference "Form 702" with "ATF F 5120.17."

§ 252.216 [Amended]

Par. 23. Section 252.216 is amended by replacing the reference "parts 231 or part 240" with "parts 24 or part 231."

Signed: March 29, 1990.

Stephen E. Higgins,

Director.

Approved: April 27, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90–13909 Filed 6–18–90; 8:45 am]

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Tuesday,
June 19, 1990

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 12

Accountability in the Provision of HUD Assistance; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 12

[Docket No. R-90-1479; FR-2731]

RIN 2501-AA94

Accountability in the Provision of HUD Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. Specific features of the rule include:

For assistance distributed through a competitive process:

HUD publication of a **Federal Register** Notice announcing the availability of the assistance, as well as the application requirements and procedures and the selection criteria that HUD will use in making the assistance available.

Public inspection of documentation and other information adequate to indicate the basis upon which both HUD and the recipients of the assistance provided or denied the assistance to their applicants.

Publication in the **Federal Register** of decisions to provide assistance made by the Department, and public notification of such decisions made by States and units of general local government.

For assistance for specific projects or activities, disclosure by certain applicants seeking assistance from HUD, and from States and units of general local government, of other government assistance to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put.

For HUD assistance for housing projects, a certification by HUD that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources, as well as subsequent adjustments to the assistance based on updated disclosures by applicants, above.

DATES: Comments due August 20, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule 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 ensure 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) 708-0284, TDD (202) 708-4337.

FOR FURTHER INFORMATION CONTACT: *For general questions regarding provisions of this rule requiring notice and documentation of assistance, and notice of funding decisions:* Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5262, telephone (202) 708-0294, TDD (202) 708-1112.

For general questions regarding provisions of this rule requiring disclosures by applicants: Roosevelt Jones, Acting Director, Office of Ethics, Room 10155, telephone (202) 708-3815, TDD (202) 708-1112.

For specific questions regarding programs administered by the Assistant Secretary for Community Planning and Development: Syl Angel, Director, Office of Program Policy Development, Room 7148, telephone (202) 708-2090, TDD (220) 708-2565.

For specific questions regarding programs administered by the Assistant Secretary for Public and Indian Housing: Nancy S. Chisholm, Director, Office of Policy, Room 4118, telephone (202) 708-0713, TDD (202) 708-0850.

For specific questions regarding programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner: Stephen Cooley, Director, Office of Policy Development, Room 9220, telephone (202) 708-2454, TDD (202) 708-4594.

For specific questions regarding programs administered by the Assistant Secretary for Fair Housing and Equal Opportunity: Laurence Pearl, Director, Office of Program Standards and Evaluation, Room 5226, telephone (202) 708-0288, TDD (202) 708-0113.

All addresses are at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. None of the telephone numbers listed above is toll-free.

SUPPLEMENTARY INFORMATION:

Information Collections

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.** Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the 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 below. Send comments 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, Attention: Desk Officer for HUD, Washington, DC 20503.

This proposed rule would implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (the "Reform Act"). Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. Specific features of the rule include:

For assistance distributed through a competitive process:

HUD publication of a Notice in the **Federal Register** announcing the availability of the assistance, as well as the application requirements and procedures and the selection criteria

that HUD will use in making the assistance available.

Public inspection of documentation and other information adequate to indicate the basis upon which both HUD and assistance recipients provided or denied the assistance to their applicants.

Publication in the **Federal Register** of decisions to provide assistance made by the Department, and public notification of such decisions made by States and units of general local government.

For assistance for specific projects or activities, disclosure by certain applicants seeking assistance from HUD, and from States and units of general local government, of assistance from other sources to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put.

For HUD assistance for housing projects, a certification by HUD that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other sources, as well as subsequent adjustments to the assistance based on updated disclosures by applicants, above.

(Section 102(a)(4)(D), which requires **Federal Register** publication of the housing assistance allocations under the "fair share" formula of section 213(d)(1)(A) of the Housing and Community Development Act of 1974, will be implemented by regulatory change to 24 CFR part 791)

The Department is providing the following two charts to help the reader navigate through this rule. The first chart is an overview of the types of assistance covered by each Subpart and the requirements imposed, both in terms of the substantive requirements and which entity must carry them out:

Subpart	Assistance covered	Requirements; who must comply
Subpart B—Notice and Documentation of Assistance.	Assistance made available by HUD through competition.	HUD: 1. Publish FEDERAL REGISTER Notice regarding the availability of assistance, and the application requirements and selection criteria to be used in providing the assistance. 2. Ensure that documentation is sufficient to indicate the basis on which the assistance was provided or denied. Five-year period for public inspection of documentation. 3. Publish Notice in FEDERAL REGISTER regarding decisions to provide assistance.
	Assistance made available on a competitive basis by a recipient that received the assistance through a HUD competition.	*Recipient:* Ensure that documentation is sufficient to indicate the basis on which assistance was provided or denied. Five-year period for public inspection of documentation. *State or unit of general local government recipient:* Notify public regarding decisions to provide assistance.
Subpart C—Disclosure of Information	Assistance made available for a specific project or activity by;. —HUD; —A State or unit of general local government;. —Or an entity other than a State or unit of general local government, where the application must be submitted to HUD for any purpose.	*Applicant:* 1. Disclose other government assistance, interested parties, and sources and uses of funds, if the applicant has received or can reasonably be expected to receive, assistance in excess of $200,000 in the fiscal year. 2. Make updates to reflect substantial changes in information.
Subpart D—Limitation on Housing Assistance	Assistance made available by HUD for a housing project.	*HUD:* Certify that the amount of assistance is not more than is necessary to provide affordable housing. Make post-assistance adjustments based on updates, above.

The second chart provides a derivation table, indicating the relationship between the rule and section 102 of the Reform Act:

Section of rule	Section of statute
Subpart B	
§ 12.12(a)	§ § 102(a) (1) and (2).
§ 12.12(b)	§ 102(a)(3).
§ 12.5(b)	§ 102(a)(5).
§ 12.14(a)	§ 102(a)(4)(A).
§ 12.14(b)	§ 102(a)(4)(B)(i) and (E).
§ 12.14(c)	§ 102(a)(4)(B)(ii) and (E).
§ 12.16	§ 102(a)(4)(C).
Subpart C	
§ 12.32(a)	§ 102(b).
§ 12.32(b)	§ 102(b) (1)–(3).
§ 12.32(c)	§ 102(c).
§ 12.34(a)	§ 102(e).
§ 12.34(b)	§ 102(f).
Subpart D	
§ 12.52	§ 102(d).

A discussion of the rule's content follows.

Notice and Documentation of Assistance—Subpart B

Subpart B of the rule would implement sections 102(a) (1) through (4) (C) and (E) and (5). These provisions contain three principal features:

a. *Notice of assistance.* Before soliciting or receiving any applications for "assistance under any program or discretionary fund administered by the Secretary," the Department must publish a Notice in the **Federal Register** containing:

1. Notification of the availability of the assistance;

2. A description of the application requirements and procedures for applying for the assistance, including any deadlines relating to the award or allocation of the assistance; and

3. The criteria by which selection for the assistance will be made (to be published not less than 30 days before any deadline for assistance applications).

b. *Documentation of applications and decisions.* 1. HUD must award or allocate "assistance under any program or discretionary fund administered by the Secretary" only in response to a written application in a form approved in advance, except where other award or allocation procedures are specified by statute.

2. HUD must ensure that documentation and other information regarding each application submitted to HUD by a State, unit of general local government, or other recipient, for

"assistance under any program or discretionary fund administered by the Secretary" are sufficient to indicate the basis on which HUD provided or denied the assistance.

3. HUD must ensure that each State, unit of general local government, or other recipient of "assistance under any program or discretionary fund administered by the Secretary" requires that documentation and other information regarding any application submitted to that entity for a subsequent award or allocation of that assistance are sufficient to indicate the basis upon which the entity provided or denied the assistance.

4. HUD, or the State, unit of general local government, or other recipient, must make available for public inspection for a period of at least five years, each application and all related documentation and other information, including any written indication of support that was received for an applicant's submission.

c. *Public notification of "funding decisions."* HUD must publish a Notice in the **Federal Register** to notify the public of all "funding decisions" made by the Department, and must ensure that States and units of general local government notify the public of all their decisions to make subsequent awards or allocations of the assistance.

Coverage

a. *Notice and documentation.* The first two elements of subpart B (sections 102(a) (1) through (4) (B) and (E) and (5)) of the Reform Act apply to "assistance under any program or discretionary fund administered by the Secretary." The term is undefined, and requires an interpretation to establish its coverage. Based on an analysis of the relevant provisions of section 102, the Department believes that this term should be limited to discretionary authorities administered by the Department that provide assistance on a competitive basis.

It is true that use of the phrase, "any program or discretionary fund," is very broad, potentially covering any HUD program that provides "assistance." In its widest interpretation, the phrase could apply to discretionary, competitive programs, as well as those authorizing formula grants, FHA mortgage insurance, and GNMA guarantees. In the Department's view, however, the context of section 102 compels a more restrictive reading.

Section 102 appears to be primarily, if not exclusively, concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance. These attributes are the traditional hallmarks of discretionary programs that provide assistance on a competitive basis: programs that announce the availability of assistance, invite applications to request assistance, and make decisions competitively, based on the application and specific selection criteria.

This process is very different from that used in the Department's formula-driven programs, such as the Community Development Block Grant program, the Rental Rehabilitation program, the Emergency Shelter Grants program, and Public Housing Operating subsidies. These programs provide some or all of their funding on a formula entitlement basis. Although they may use a "statement" or other document in connection with the receipt of the assistance, the document does not serve the primary purpose of an application—to determine eligibility and amount of assistance. In addition, formula programs do not use selection criteria: recipients' funding is determined by formula, not by competition.

Similar anomalies attend application of section 102 to "demand" programs and to certain other funding actions that are taken without a competition. "Demand" programs, such as FHA mortgage insurance, section 108 loan guarantees, and GNMA's guarantee of Mortgage-Backed Securities, traditionally make "assistance" available to all who meet their eligibility criteria. They do not involve a competition, and, therefore, do not use selection criteria to choose among competing applications.

Other authorities make assistance available with respect to specific projects or activities, but do not use a competition in the provision of the assistance. These include actions that necessarily follow competitive or "demand" program funding decisions almost as a matter of course (*e.g.*, renewals of contracts entered into under section 8 of the United States Housing Act of 1937, and amendments under section 202 of the Housing Act of 1959); the Section 8 Property Disposition program; and the provision of assistance as an incentive in connection with a HUD-approved Plan of Action under Title II of the Housing and Community Development Act of 1987.

For these reasons, the Department proposes to exclude the following authorities from section 102's notice and documentation requirements. (It should be noted that the determination to exclude an authority from these requirements would not be made on a program-wide basis: only those aspects or elements of an authority that qualify for the exclusion would be excluded.)

"Demand programs. All FHA, GNMA, and other programs or program elements that make assistance available on a "demand" basis. An exception would be the Section 312 Rehabilitation Loan program for investor-owner properties. This component of the Section 312 program is a "demand" program, but the Department believes, as a matter of agency discretion, that larger Section 312 investor-owner loans should be subject to section 102's requirements. Thus, the rule would cover all Section 312 investor-owner loans over $200,000.

Formula programs. Any aspect of a formula program that distributes assistance by formula. Under this rationale, the only HUD program that would be wholly excluded from subpart B's coverage would be the Public Housing Operating Subsidies program under 24 CFR part 990, and elsewhere in 24 CFR chapter IX.

Only those elements of the Department's other formula-based programs that actually distribute assistance by formula would be excluded. Thus, the Entitlement and State programs in the Community Development Block Grant (CDBG) program would be excluded. In the Rental Rehabilitation program, formula distributions to States, formula cities and counties, and consortia of units of general local government would be excluded. In the Emergency Shelter Grants program, formula allocations to States, formula cities and counties, and Territories would not be subject to subpart B.

On the other hand, the non-formula aspects of these programs would be subject to section 102's notice and documentation requirements. These include the CDBG Small Cities program, the HUD-administered Small Cities Rental Rehabilitation program, and the HUD reallocations under the Emergency Shelter Grants program.

Non-competitive authorities. Non-formula, non-"demand" programs or elements of programs, or other actions, that do not distribute assistance on a competitive basis. As noted above, these would include contract renewals and amendments, the Section 8 Property Disposition program; the provision of assistance as an incentive in connection with a HUD-approved Plan of Action under Title II of the 1987 Act; and the Fair Housing Assistance Program (FHAP), whose regulations were revised on May 9, 1989 (54 FR 20094) to institute a single, non-competitive funding approach. Again, the exclusion from subpart B's requirements would reach only those program elements that do not use a competitive process to distribute

the assistance in question. For example, HUD is authorized to make assistance under Title V of the Housing and Urban Development Act of 1970 either on a competitive or non-competitive basis. Section 102 (and this rule) would only apply where a competition is in fact used.

Procurement contracts. Contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR)(48 FR chapter 1). This reflects the Department's belief that these contracts are designed to purchase goods or services, and do not provide "assistance" within the meaning of section 102.

The Department requests comments on the proposed coverage of subpart B. As noted, the Department believes that section 102(a) does not cover formula, "demand," and other authorities that do not provide assistance on a competitive basis. The Department seeks comment, however, on whether, as a matter of agency discretion, the scope of subpart B should be expanded to include one or more of the following type of programs: non-formula, non-"demand" programs that provide assistance, but do not use a competitive distribution process.

b. *Funding decisions.* As mentioned above, section 102(a)(4)(C) of the Reform Act requires public notification of "funding decisions" made by HUD, as well as by States and units of general local government. The Act defines the term, "funding decision," to mean:

> the decision of the Department to make available grants, loans, or any other form of financial assistance to an individual or to an entity, including (but not limited to) a State, unit of general local government, or other governmental entity, or an agency thereof (including a public housing agency), an Indian tribe, or a non-profit organization, under any program administered by the Department that provides by statute, regulation, or otherwise, for the competitive distribution of financial assistance.

Since this definition is limited to competitive assistance programs, the coverage of section 102(A)(4)(C) would be the same as "assistance under any program or discretionary fund administered by the Secretary" under sections 102 (a)(1) through (4)(B) and (E) and (5).

Applicability to States, Units of General Local Government, and Other Recipients of Assistance. It should also be noted that section 102(a)(4)(B)(ii) requires States, units of general local government, and other assistance recipients to ensure the adequacy of information concerning the grant or denial of assistance in connection with "any application for subsequent award or allocation of (assistance under any program or discretionary fund administered by the Secretary)" by that entity or recipient. Section 102(a)(4)(C)(i) requires States and units of general local government to notify the public of decisions to provide assistance to "subsequent recipients." The Department believes that "the subsequent award or allocation" and "subsequent recipient" language imposes obligations on the recipient involved only to the extent that the original allocation from HUD was subject to section 102.

Furthermore, the Department believes that the documentation and public notification requirements of subpart B apply to States, units of general local government, and other recipients of assistance only to the extent that the recipient uses a competitive process to distribute the assistance to its applicants. This conclusion is based upon the earlier discussion, that the "funding decision" concept only makes sense in the context of the competitive award or allocation of assistance.

Thus, a State that received a formula grant from HUD under the CDBG States program would not be subject to subpart B of the rule when it distributed these amounts to units of general local government within the State. The initial exempt character of the funds would continue through subsequent distribution by the State. The conclusion would be the same, even if the subsequent distribution by the State used a competitive process.

On the other hand, if HUD reallocated Emergency Shelter Grants funds to a unit of general local government, the further use of those funds by the unit of general local government would be covered, but only to the extent that the unit of general local government used a competitive process to make the assistance available to its applicants. This result stems from the facts that the initial grant of assistance from HUD would not be exempt from subpart B and that the unit of general local government used a competitive process to distribute the funds.

Future action. An illustrative list of the programs (and elements of programs) that the Department proposes to subject to sections 102(a)(1) through (4)(C) and (E) and (5) of the Reform Act may be found at § 12.10 of the rule. The Department intends to make conforming changes in each of the authorities subject to section 102(a)(1) through (4)(c) and (E) and (5), either when this rule is made final or in a subsequent rule making.

Disclosure by Applicants—Subpart C

Overview. Section 102(b) of the Reform Act requires certain applicants seeking certain types of assistance from HUD, and from States and units of general local government, to make a number of disclosures. These include information on other government assistance to be used with respect to the project or activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put.

Section 102(c) requires applicants to update these disclosures to reflect substantial changes during the time that an application is pending or assistance is being provided. Section 102(e) provides administrative remedies, including civil money penalties, for applicants that violate the disclosure and updating requirements of sections 102(b) and (c).

Coverage. Assistance subject to subpart C is defined as, "assistance within the jurisdiction of the Department." Section 102(m)(4) of the Reform Act defines this term to mean—

> any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

Although this term appears to encompass virtually all the Department's programs, the Department believes that section 102's context limits its coverage. Section 102(b) indicates that the law's disclosure provisions apply to applications for assistance for specific projects or activities.

A number of HUD programs do not provide assistance for specific projects or activities. These include Public Housing Operating Subsidies; the formula-driven elements of the CDBG, Rental Rehabilitation, and Emergency Shelter Grants programs (as discussed under subpart B, above); and GNMA loan guarantees. In each case, the assistance is provided for a range of eligible activities that need not be specified.

Other programs do involve a specific undertaking, but do not involve a "project or activity." These include FHA single family mortgage insurance and Section 312 Rehabilitation Loans for single family properties, as well as tenant-based Section 8 Certificates and Vouchers. Under these programs, the property to be purchased or rehabilitated, or the assistance to be provided, is known, but the assistance cannot be said to be for a "project or activity." It should be noted that the

multifamily components of the FHA and section 312 programs do involve a "project," and, therefore, would be subject to subpart C.

As mentioned in the discussion under subpart B, the disclosure requirements of subpart C attach where assistance under the program is actually made available for a section 102 purpose: in this case, a specific project or activity. Program elements that do not function in this manner are not covered.

The list of programs subject to subpart C in § 12.30 of the rule reflects this reading. The Department specifically requests comments on the coverage contained in that section.

Threshold—programmatic considerations. Under subpart C, each applicant that submits an application for covered assistance to HUD, or to a State or to a unit of general local government, for a specific project or activity must make the required disclosures, if the applicant has received, or can reasonably be expected to receive, an aggregate amount of all forms of such assistance in excess of $200,000 during the Federal fiscal year in which the application is submitted.

As noted in the discussion under subpart B, above, if the original distribution of assistance from HUD to a State or unit of general local government is exempt from coverage, the subsequent distribution of the assistance by the State or unit of general local government would be similarly exempt. This is based on language specific to subpart B.

Section 102(b) does not contain this "chain" language. Accordingly, if a State's or a unit of general local government's subsequent distribution of assistance received from HUD meets the definition of "assistance within the jurisdiction of the Department," the applicant must make the required disclosures, without regard to whether HUD's initial distribution of assistance was exempt from coverage. Further, subpart C derives its coverage from the existence of "assistance within the jurisdiction of the Department." Unlike subpart B, it is irrelevant whether the assistance is delivered by a competition or not.

For example, a formula distribution to a metropolitan city under the CDBG program would be exempt from subpart C. All applications to receive this money from the city, however, would be subject to section 102's disclosure requirements, provided the funds were made available for a specific project or activity, whether or not a competition is used to distribute the assistance.

Subpart C contains the same exemption as subpart B for procurement and other contracts subject to the Federal Acquisition Regulation. As noted earlier, the Department does not believe that such contracts provide "assistance" within the meaning of section 102.

As noted above, section 102(b) applies to applications to a State or to a unit of general local government. In some cases, it is possible for an application for covered assistance to be made to an entity that is neither a State nor a unit of general local government. In these cases, the applicant would have to make the required disclosures to HUD, if the application is required by statute or regulation to be submitted to HUD for approval, environmental review, rent determinations, or for any other purpose. This special rule is designed to further the disclosure purposes of section 102(b). All other applications to "other entities" would not be subject to subpart C.

Future action. An illustrative list of the programs (and elements of programs) that the Department proposes to subject to section 102(b) of the Reform Act may be found at § 12.30 of the rule. The Department intends to make conforming changes in each of the authorities subject to section 102(b), either when this rule is made final or in a subsequent rule making. The Department specifically requests public comment on the coverage proposed by the Department for the disclosure features of subpart C of the proposed rule.

Threshold—applicant considerations. Section 102(b) indicates that the disclosure threshold is met when the applicant—

> has received, or, in the determination of the Secretary, can reasonably be expected to receive assistance within the jurisdiction of the Department in excess of $200,000 in the aggregate during any fiscal year or such lower amount as the Secretary may establish by regulation.

This language raises two questions. First, the Department proposes to leave the dollar threshold at $200,000, rather than to propose a lower amount. The issue involves balancing interests. Lowering the threshold would increase the number of individuals who would be subject to disclosure. The Department has no experience with this provision, and would prefer to see how the $200,000 threshold works before imposing the additional compliance burden that a lower amount would entail. If experience dictates the need for a lower threshold, the Department will initiate a rule making on this point at a later time.

Second, the determination of reasonable expectation of receipt of assistance poses difficult questions. The Department considered many options on this point, including ways of ascertaining the strength of pending and future applications for discretionary programs. The Department found none of these approaches satisfactory, since they involved subtle judgments that appeared to lack clear rational support—a situation that would have created confusion among program participants and would have frustrated the Department's efforts to enforce compliance with the law.

Thus, subpart C contains an approach that the Department believes provides clear guidance, while at the same time according a rational basis for making the "reasonable expectation" determination required by the statute. Under this approach, an applicant would be deemed to have a reasonable expectation of receiving the following amounts of assistance within the jurisdiction of the Department:

1. The full amount requested in any application for assistance, including the current application, that was submitted during that fiscal year and that is pending before the Department or before any other entity. The assistance is considered received when the application is submitted: the date of the actual receipt of the assistance is irrelevant. The actual amount of the assistance received would be used only if it is known at the time of the instant application.

2. The amount of any such assistance that is likely during that Federal fiscal year—

(i) To be made available on a formula basis to the applicant by the Department or by any other entity; or

(ii) To be generated in the form of program income, as defined in 24 CFR part 85.

Content of disclosure. Applicants that meet the assistance threshold must disclose the following information:

1. *Other government assistance.* Any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be, made available with respect to the project or activities for which the assistance is sought.

2. *Interested parties.* The name and pecuniary interest of:

Any developer, contractor, or consultant involved in the application for the assistance, or in the planning, development, or implementation of the project or activity involved; and

Any other person who has a pecuniary interest in the project or activities for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

3. *Sources and uses of funds.* A report, as provided in administrative instructions issued by HUD, specifying all the expected sources of funds that are to be made available for the project or activity, and the expected uses to which those funds are to be put.

The Department proposes to require all developers, contractors, or consultants involved in the application, or in the planning, development, or implementation of the project or activity, to make the required disclosures, regardless of the size of their interest. For all other persons, the Department proposes to use a dollar/percentage threshold for pecuniary interests.

These interpretations are based on the language of section 102(b)(2). This provision requires the following disclosures:

> The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, or consultants * * *.

The Department believes that the first sentence's reference to "any person with a pecuniary interest" does not require disclosure of any pecuniary interest, no matter how small, but instead permits use of a minimum threshold. However, the second sentence's reference to "persons with a pecuniary interest" makes clear that these individuals must disclose any pecuniary interest.

Requiring disclosure of all pecuniary interests would in most cases yield nothing but dramatically enlarged paper requirements. The Department believes that the $50,000/10 percent test for "other" persons strikes an appropriate balance between minimizing paper burden and ensuring that significant interests are reported.

In addition, the Department recognizes the difficulty in determining the persons with the pecuniary interest that must make the disclosures required by this provision. For example, does the employee of a consultant have a pecuniary interest in an assistance application that the consultant submits on behalf of its principal? What about the spouse of a developer seeking HUD assistance? The Department specifically requests comment on the standards that may be used in determining the persons with a pecuniary interest for purposes of this rule.

Updates. During the period in which an application for assistance within the jurisdiction of the Department is pending or in which the assistance is being provided, the applicant must report to HUD or to the State or unit of general local government (as appropriate):

1. Any information that the applicant should have disclosed with respect to the application, but failed to do so.

2. Any information that would have been subject to disclosure, but that initially arose after the time for making disclosures. This would include the name and pecuniary interest of any person who did not have a pecuniary interest in the project or activity that exceeded the threshold at the time of application, but that now exceeds the threshold.

3. With regard to changes in any previously disclosed information:

(A) Any change in other government assistance that exceeds the amount of the assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

(B) Any change in the amount of pecuniary interest of a person that was previously disclosed by the applicant and that exceeds the amount of the previously disclosed interest by $50,000 or by 10 percent of the interest (whichever is lower).

(C) Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent (whichever is lower).

(D) Any change in a use of funds that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent (whichever is lower).

The Department believes that updates should cover three areas: information that should have been reported at the application stage, but was not; information that would have been subject to disclosure, but that initially arose after the application stage; and changes in previously disclosed information that represents a change in previously reported information is important to carrying out the disclosure requirements of section 102(c). As noted earlier, the Department believes that the dollar/percent threshold formulation for disclosure changes strikes the appropriate balance between paper burden and matters that should be disclosed under section 102.

Availability of disclosed material. Section 102 only requires that the covered material be "disclosed." The Department believes that public availability is an important element of disclosure, and proposes to make available to the public all information disclosed to it, and to States or units of general local government, under subpart C. The Department is aware, however, that this position may raise questions under the Trade Secrets Act and the Privacy Act. The Department specifically requests comment on this point.

Administrative remedies. Section 102(e) of the Reform Act provides that if HUD receives or obtains information providing a reasonable basis to believe that a violation of the reporting and related requirements has occurred, HUD will:

1. If a recipient of the assistance has not been selected, determine whether to terminate the selection process or take other appropriate action; and

2. If a recipient of the assistance has been selected, determine whether to:

(i) Void or rescind the selection, subject to review and determination on the record after opportunity for hearing;

(ii) Impose sanctions upon the violator, including debarment pursuant to 24 CFR part 24, subject to review of the determination on the record and after opportunity for hearing;

(iii) Recapture any funds that have been disbursed;

(iv) Permit the violating applicant selected to continue to participate in the program; or

(v) Take any other actions that HUD considers appropriate.

Civil money penalties. If any person knowingly and materially violates any of the reporting and related requirements, HUD may impose a civil money penalty not to exceed $10,000 for each violation.

Limitation on Housing Assistance—Subpart D

Section 102(d) contains the following requirement:

> The Secretary shall certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of [any other government assistance to be used in connection with the project]. The Secretary shall adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as the Secretary determines to be appropriate, for any changes reported [in a required update].

This provision raises a number of issues.

Coverage. Section 102(d)'s coverage is limited to programs that provide assistance to "housing projects." The rule defines "housing project" to mean property containing five or more dwelling units that is to be used for primarily residential purposes. As with

the disclosure features of subpart C, the term, "project," would not reach single family properties.

The Department believes that the term, "housing project," should include living arrangements such as independent group residences, board and care facilities, group homes, and transitional housing. These arrangements meet the "primarily residential purposes" test. On the other hand, the following arrangements do not, in the Department's view, meet this test: intermediate care facilities, nursing homes, and hospitals.

The programs subject to section 102(d) would be very similar to those subject to the disclosure requirements of section 102(b), with one major difference. As noted earlier, both sections 102 (a) and (b) reach the "second use" of HUD assistance in some circumstances. Subpart B provides for "other recipient" coverage where the initial HUD assistance and the "second use" are pursuant to a competition. The disclosure features of subpart C reach assistance that a grantee receives from HUD, and then makes available to a subsequent recipient for a specific project or activity. The Department believes that section 102(d) only covers the "first use" of assistance: from HUD to the initial grantee.

Although the statutory language is not dispositive on this point, the Department believes that there are strong reasons to support this conclusion. First, section 102(d) does not specifically refer to the "second use" case. As noted, however, other provisions in section 102 explicitly do provide for such coverage. In the Department's view, if Congress had intended to reach the "second use" case, it would have done so explicitly.

Furthermore, the principal focus of "second use" coverage would be the Department's block grant programs, such as the Rental Rehabilitation and Community Development Block Grant programs. One of the hallmarks of these programs is the limited degree of HUD control and supervision they involve.

If section 102(d) applied to the "second use" of block grant funds, the required certification would likely compel the Department to conduct its own review of every housing activity carried out by grant recipients, to ensure that no "excess" dollars were involved in the project. Although it is doubtful that HUD could discharge its certification responsibilities by relying on recipient enforcement of section 102(d), even this approach would entail the use of detailed administrative instructions to guide the recipients "affordable housing" analysis.

Either option would impose considerably more HUD control on block grant recipients than the law now permits. Indeed, in the Department's view, the degree of Federal oversight inherent in both approaches would literally turn the block grant concept on its head. Again, if the Congress intended such a radical departure from the block grant concept, the Department believes the Congress would have provided explicit language to accomplish this end.

Future action. An illustrative list of the programs (and elements of programs) that the Department proposes to subject to sections 102(d) of the Reform Act may be found at § 12.50 of the rule. The Department intends to make conforming changes in each of the authorities subject to section 102(d), either when this rule is made final or in a subsequent rule making. The Department specifically requests public comment on the coverage proposed by the Department for the disclosure features of subpart D of the proposed rule.

Presence of other government assistance. The Department believes that section 102(d)'s requirements apply only where other government assistance is present in the housing project. The certification of "affordable housing" is not required where the only governmental assistance involved in the project is the HUD assistance.

The Department believes that this interpretation is consistent with both the language and intent of section 102(d). The relevant portion of section 102(d) provides:

> The Secretary shall certify that assistance * * * to any housing project shall not be more than is necessary to provide affordable housing after taking account of [any other government assistance to be used in connection with the project].

In the Department's view, a fair reading of the language indicates that section 102(d) imposes a single inquiry that is triggered by the presence of other government assistance: is it "affordable housing after taking account of" the other assistance?

In addition, the provision was enacted in response to abuses that occurred because of the presence of other government assistance in HUD-assisted projects. It was not directed at the HUD programs, standing alone. If Congress intended to cover HUD assistance only, the Department believes that the language would have so specified.

The Department's programs are regulated by a wide variety of laws and regulations that are designed to ensure that no "windfalls" flow to any parties to the assistance transaction. If section 102(d) were interpreted to apply to all HUD programs, it would require modification of many, or even all, of these other authorities. The Department does not believe that Congress would have adopted such a sweeping change without including explicit language to accomplish it.

As it has done in the past, the Department will continue reviewing its program authorities to determine the need and feasibility of additional measures to ensure that its assistance provides the "biggest bang for the buck."

The Department also wishes to note that the requirements of section 102(d) and the disclosure requirements of section 102(b) are entirely separate. HUD is required to make section 102(d)'s certification, even if the applicant does not meet the $200,000 threshold for making disclosures under section 102(b), and will request the information concerning other government assistance that is necessary to permit HUD to make the required certification. The Department believes that this is the plain meaning of the statute.

Project feasibility. The Department believes that the question of the amount of assistance necessary to ensure a project's feasibility must be answered in the context of each covered program, and may well vary from project to project. Given this reality, the Department believes that the best approach is to use this rule as an "enabling authority," and as notice to the public of the existence of the certification requirement and of its possible effect on amounts made available under its subsidy programs. Under this approach, the rule would set forth the overall standards—both substantive and procedural—governing section 102(d)'s requirements. Administrative instructions would be issued as necessary for covered programs, specifying the details for implementing the statutory provision for specific housing projects.

Specifically, the rule would require the Department to issue instructions specifying the standards to be followed in making the required statutory determination. The instructions may be on a program-by-program or other basis, and may, in the Department's discretion, establish limits on the amount of assistance within the jurisdiction of the Department that may be used for the housing project, or may provide for the full or partial negotiation of the amount of assistance for individual housing projects. The Department believes that without this flexibility, the resulting rigidity would jeopardize attainment of

the twin objectives of complying with the law and assisting deserving housing projects. Because of the near-limitless number of combinations of subsidies—in the form of grants from other governmental entities, tax credits, or other covered forms of other government assistance—that potentially could be juxtaposed as a result of information received by the Secretary concerning "related assistance," it is impracticable to set out in a rule the manner in which individual determinations regarding limitation of assistance will be made. Program-by-program instructions, notice to prospective recipients of assistance at the earliest practicable time when adjustments in assistance are found to be necessary, and an explanation of the manner in which the determination was made that an adjustment was necessary, are the only means available to carry out the Secretary's responsibilities under section 102(d).

The instructions would consider the aggregate amount of assistance—from the Department and from other government sources—that is necessary to ensure the feasibility of the assisted activity. The Department would take into account all the factors relevant to feasibility, including (but not limited to) historic rates of returns for owners, sponsors, and investors; the long-term needs of the project and its tenants; and usual and customary fees charged in carrying out the assisted activity.

In no event may the Department permit the aggregate amount of assistance to exceed the amount that the Department determines is necessary to make the assisted activity feasible. The Department wishes to make clear that section 102(d) does not prohibit the use of other government assistance in a housing project, if the aggregate of the assistance provided by HUD and the other government assistance does not exceed the amount necessary to make the assisted activity feasible.

The Department would inform each applicant for assistance for a housing project about the requirements of this section and the administrative instructions referred to in this paragraph (a) at the earliest practicable stage in the application process. The Department would also work with the applicant to ensure that the applicant understands the applicability of the administrative instructions to the specific housing project. These provisions are intended to ensure that applicants "get the word" early on—before the elements of a "deal" solidify—and that any problems or misunderstandings between the applicant and HUD can be addressed at an early stage.

If the Department determines that the aggregate assistance from the Department and from other government assistance for a housing project exceeds the amount that the Department determines is necessary to make the assisted activity feasible, HUD would consider all options available to enable it to make the required certification. Among other things, HUD may impose a dollar-for-dollar, or equivalent, reduction in the amount of the HUD assistance to reflect the amount of the other government assistance. In grant programs, this could result in a reduction of any grant amounts not yet drawn-down. In loan programs or mortgage insurance programs, this could result in a reduction in the outstanding loan amount. In the Section 8 program, this could result in a dollar-for-dollar reduction in the amount of the Section 8 subsidy. The administrative instructions referred to in paragraph (a)(2) will contain guidance on the options that HUD may use with respect to the housing project.

HUD would adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as HUD determines appropriate, for any changes that are, or should have been, reported under § 12.32(c). In order to ensure that the applicant is fully aware of the possibility of subsequent reductions, each contract that provides assistance to a housing project would contain specifying the standards governing such adjustments.

In determining the amount of any adjustment, HUD would consider all relevant factors, including the extent to which the changes affect the required certification, the effect of the adjustment on the financial viability of the housing project and on any tenants, and the extent to which the need for an adjustment may be attributable to the failure of the applicant to make the required disclosures.

HUD has enlisted the services of an independent contractor to provide technical assistance in the development and implementation of specific criteria necessary to evaluate and determine the appropriate level of HUD subsidy/assistance, when combined with other government assistance.

This contract will (1) provide for review and assessment of HUD's current program methodology for determining maximum HUD subsidy; (2) establish specific programmatic criteria for HUD to utilize in its subsidy evaluation process; and (3) create the quantitative techniques necessary to analyze and adjust the level of HUD subsidy, using computer application programs. To the extent that the contract leads to the development of criteria that may be expressed effectively as regulatory principles, the final rule in this proceeding may adopt additional language arising out of the contractor's analysis.

The Department specifically requests public comment on the implementation of section 102—both the procedural and substantive aspects—described in the preceding paragraphs. The Department specifically seeks comment on the following point. Although there is not much legislative history on section 102(d), the two references to section 102(d) in congressional consideration of the Reform Act [1] indicate that the provision was primarily intended to address the situation in which developers reaped windfall profits by coupling low-income tax credits with HUD assistance.

Section 102(d) covers tax credits and other tax benefits, but also reaches State and local grant and loan programs. When these latter programs are coupled with HUD assistance, they typically benefit only the residents of the housing: no one outside the project is unjustifiably enriched. An example of this situation would be the desire of a State or unit of general local government to make a grant for certain amenities in a public housing project. In such a case, the opportunity for unjust enrichment or program abuse is non-existent.

In light of the clear intent of section 102(d), the Department requests comments on whether section 102(d) permits different treatment for the government grant/loan situation, and how that different treatment should be expressed in the final rule.

Effect on other laws. The Department believes that section 102(d) has the effect of modifying any statutory provision that contains an assistance mechanism that would hinder in any way the Department's ability to fully implement section 102(d)'s requirements. The Department recognizes that section 102(d) does not contain the customary "notwithstanding any other provision of law" language to sweep aside conflicting authorities. Failure to accord section 102(d) a broad interpretation would, however, severely diminish section 102(d)'s effectiveness—a result that the Department believes would violate the statutory language, as well as the intent of Congress in enacting the provision.

An example of an authority that would demonstrate the need for a broad

[1] 135 Cong. Rec. S16592, 16604 (daily ed. Nov. 21, 1989) (Statements of Sens. Cranston and Sasser).

interpretation is the Section 8 project-based existing housing program. Under that program, assisted rents must be "comparable" to other rentals in the area. A reduction in assistance under section 102(d) could have the effect of making these rents less than "comparable"—an arguable violation of the provision. Under the interpretation adopted in the rule, the "comparability" requirement would be modified to reflect any assistance adjustments under section 102(d).

Effectiveness. The rule provides that section 102(d)—both the certification and subsequent adjustment features—are prospective only. They apply to any HUD assistance that is made available on or after the rule's effective date.

This result is clear with respect to the certification aspect of the provision. Certifications are made at the initial assistance stage, and can only be prospective, since section 102(n) of the Reform Act specifies that section 102 takes effect only upon the issuance of effective regulations.

The applicability of section 102(d) to existing arrangements raises the issue of whether the provision should be applied prospectively from the date of final rule's effectiveness, or whether it should apply to HUD assistance provided before that date.

The Department believes that the subsequent adjustment feature of section 102(d) should reach only assistance that is provided on or after the rule's effective date. Section 102(d) requires subsequent adjustments of HUD's assistance to be made on the basis of "any changes reported under subsection (c)." Subsection (c) requires the applicant to "update the disclosure required (under subsection (b) for) any substantial change." The Department believes that this scenario makes subsequent adjustments hinge on the applicability of the initial assistance to section 102(d): since subsequent adjustments are to be made on the basis of updates, and updates are to be made to applications originally subject to section 102(d), only assistance approved on or after the rule's effective date can be subject to subsequent adjustment.

Two final points should be noted with regard to the coverage of section 102(d). First, if an applicant for HUD assistance has "other government assistance" (such as a tax credit) in the project before the application is made to HUD, HUD will consider the other assistance in making its own assistance available, but only to the extent that the other assistance has continuing vitality. Tax credits or other assistance, such as grants, that have been "used up" would not be taken into account. Thus, the Department would not take into account a grant whose proceeds had been expended for the project before the present request for assistance. If, however, the grant was initially made before the assistance request, but provided for the receipt of grant amounts after the request, the value of the remaining payments would be taken into account for purposes of section 102(d). The Department does not believe that this result offends the "prospective only" nature of section 102(d), as long as the action involves a request for HUD assistance after the rule's effectiveness.

Second, if an assistance recipient approaches HUD for an increase in the assistance, the request would trigger the certification aspects of section 102(d). In this case, this would constitute a "new" request for assistance within the meaning of section 102(d). Again, no retroactivity issue would be raised, since the request would be a "new" one.

Relationship between section 102(d) and the Low-Income Tax Credit. The Department is aware that the recent legislation extending the low-income tax credit requires housing credit agencies to undertake activities similar to those required for HUD under section 102(d). A new section 42(m) of the Internal Revenue Code of 1986 (Responsibilities of Housing Credit Agencies) requires that:

> The housing credit amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

In making this determination, the housing credit agency is directed to consider the "sources and uses of funds and the total financing planned for the project" and "any proceeds or receipts expected to be generated by reason of the tax benefits." In order to assist the housing credit agency in this process, applicants for low-income housing tax credits "shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply)."

The Department recognizes that many projects involve both HUD assistance and low-income housing tax credits, and that coordinated procedures are appropriate to minimize the burden on applicants requesting assistance from different sources. As the Department develops the administrative instructions to be issued pursuant to this rule, it will explore specific ways in which the two legislative mandates could be effectively coordinated for the various HUD assistance programs.

Other Matters

Environmental review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental 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, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12291. This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it would 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 the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act. In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would impose additional reporting and disclosure burdens on government entities and program applicants, including small entities and applicants. The Department does not believe that these requirements would impose a significant burden. Indeed, virtually all the burdens that they would impose flow directly from the statute—a situation that the Department cannot correct in this rule making.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. The rule would provide additional reporting and disclosure requirements on States and

units of general local government. The Department does not believe these requirements would have the requisite Federalism implications. In any event, they are almost entirely mandated by statute—a situation that the Department cannot correct in this rule making.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. The reporting and disclosure requirements of the rule should have little or no positive or negative effect on the family.

Information collection. The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. The public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the 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 below. Send comments 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, Attention: Desk Officer for HUD, Washington, DC 20503.

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—ACCOUNTABILITY IN THE PROVISION OF HUD ASSISTANCE (FR-2731)

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Disclosure by applicants	12.32(a)	6,775	1	6,775	5	33,875
Updating disclosures	12.32(c)	1,693	1	1,693	1	1,693
Total annual burden						35,568

Semiannual agenda. This rule was listed as item number 1114 in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16226) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

(Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance program numbers are 14.120, 14.135, 14.151, 14.157, 14.164, 14.169, 14.170, 14.177, 14.178, 14.179, 14.219, 14.220, 14.225, 14.230, 14.231, 14.401, 14.409, 14.410, 14.506, 14.850, 14.852, and 14.853)

List of Subjects in 24 CFR Part 12

Administrative practice and procedure, Loan programs: housing and community development, Grant programs: housing and community development, Reporting and record keeping requirements.

Accordingly, the Department proposes to amend title 24 of the Code of Federal Regulations to add a new part 12 to read as follows:

PART 12—ACCOUNTABILITY IN THE PROVISION OF HUD ASSISTANCE

Subpart A—General

Sec.
12.1 Purpose.
12.3 Definitions.
12.5 Waivers.

Subpart B—Notice and Documentation of Assistance

12.10 Definitions.
12.12 Notice regarding assistance.
12.14 Documentation of applications and decisions.
12.16 Notice of funding decisions.

Subpart C—Disclosure by Applicants

12.30 Definitions.
12.32 Disclosure by applicants.
12.34 Sanctions and remedies.

Subpart D—Limitation on Housing Assistance

12.50 Definitions.
12.52 Limitation on housing assistance.

Authority: Section 102, Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 12.1 Purpose.

This part implements section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989). Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. Specific features of this part include the following:

(a) *For assistance distributed through a competitive process:* (1) HUD publication of a Notice in the **Federal Register** announcing the availability of the assistance, as well as the application requirements and procedures and the selection criteria that HUD will use in making the assistance available.

(2) Public inspection of documentation and other information adequate to indicate the basis upon which both HUD and the recipients of the assistance provided or denied the assistance to their applicants.

(3) Publication in the **Federal Register** of decisions to provide assistance made by the Department, and public notification of such decisions made by States and units of general local government. (Subpart B)

(b) *For assistance for specific projects or activities:* Disclosure by certain applicants seeking assistance from HUD, and from States and units of general local government, of other government assistance to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put. (Subpart C)

(c) *For HUD assistance for housing projects:* Certification by HUD that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources, as well as subsequent adjustments to the assistance based on updated disclosures applicants, above. (Subpart D)

(Section 102(a)(4)(D), which requires Federal Register publication of the housing assistance allocations under the "fair share" formula of section 213(d)(1)(A) of the Housing and Community Development Act of 1974, is implemented in 24 CFR part 791.)

§ 12.3 Definitions.

As used in this part:

Indian means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal government, or any State.

Indian Housing Authority means any entity that—

(1) Is authorized to engage or assist in the development or operation of lower income housing for Indians; and

(2) Is established—

(i) By exercise of the power of self-government of an Indian tribe independent of State law; or

(ii) By operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

HUD or *Department* means the United States Department of Housing and Urban Development.

Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other governmental entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Public housing agency means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage or assist in the development or operation of lower income housing. The term includes an Indian Housing Authority.

State means the several States, including a State Housing Finance Agency, and the Commonwealth of Puerto Rico.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by HUD; the District of Columbia; and the Trust Territory of the Pacific islands.

§ 12.5 Waivers.

(a) *Waiver of non-statutory provisions.* Upon determination of good cause, the Secretary of HUD may waive any provision of this part that is not required by law.

(b) *Waiver of statutory provisions for emergencies.* The Secretary of HUD may waive the requirements of § 12.12 (a) and (b), if the Secretary determines that the waiver is required for appropriate response to an emergency. Not less than 30 calendar days after granting a waiver under this paragraph (b), the Secretary will publish a Notice in the Federal Register stating the reasons for the waiver.

(c) *Waiver approvals.* All waivers under this section must be in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 and any guidance thereunder published in the Federal Register.

Subpart B—Notice and Documentation of Assistance

§ 12.10 Definitions.

As used in this subpart:

Assistance subject to this subpart or *assistance* means any contract, grant, loan, or cooperative agreement, or other form of assistance, under any program administered by the Department that provides by statute, regulation, or otherwise, for the competitive distribution of the assistance. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1). The term includes those elements of the following programs that provide for the competitive distribution of assistance (HUD will add other programs, as appropriate):

(1) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C (except when used as an incentive in connection with an approved Plan of Action under Title II of the Housing and Community Development Act of 1987).

(2) Section 312 Rehabilitation Loans under 24 CFR part 510 (except loan amounts less than $200,000 and loans for single family properties).

(3) Rental Rehabilitation Grants under 24 CFR parts 511 (only HUD-administered grants under subpart F and technical assistance under subpart A).

(4) The following programs under title I of the Housing and Community Development Act of 1974:

(i) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities program under subpart I),

(ii) Special Purpose Grants (only technical assistance and Historically Black Colleges) under section 105 of the Department of Housing and Urban Development Reform Act of 1989,

(iii) The Work Study program under section 107(c) of the Housing and Community Development Act of 1974, and

(iv) Community Development Block Grants to Indian Tribes under section 702(b) of the Department of Housing and Urban Development Reform Act of 1989.

(5) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.63 through 576.67).

(6) Transitional Housing under 24 CFR part 577.

(7) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(8) Section 8 Housing Assistance Payment—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(9) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped, as authorized by section 162 of the Housing and Community Development Act of 1987, and Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968).

(10) Section 8 Housing Assistance Payments—Loan Management Set—Aside under 24 CFR part 886, subpart A (except when used as an incentive in connection with an approved Plan of Action under title II of the Housing and Community Development Act of 1987).

(11) Housing Vouchers under 24 CFR part 887.

(12) Low-Rent Housing Opportunities under 22 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Child Care under section 117 of the Housing and Community Development Act of 1987.

(26) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

Recipient or *recipient of assistance* means a person that receives assistance subject to this subpart.

§ 12.12 Notice regarding assistance.

(a) *Notice of availability of assistance and application requirements and procedures*—(1) *In general.* Before the Department solicits or receives an application for assistance subject to this subpart, it will publish a Notice in the **Federal Register** containing:

(i) Notification of the availability of the assistance;

(ii) A description of the application requirements and procedures for applying for the assistance; and

(iii) Any deadlines relating to the award or allocation of the assistance.

(2) *Help in applying.* The description referred to in paragraph (a)(1)(ii) will be designed to help applicants apply for the assistance involved.

(b) *Selection criteria.*—(1) *In general.* Not less than 30 calendar days before any deadline by which applications must be submitted to the Department for assistance subject to this subpart, the Department will publish a Notice in the **Federal Register** specifying the criteria by which selection for the assistance will be made. The Notice will include the weight or relative importance of each selection criterion, as well as any other factors that may affect the selection of recipients.

(2) *Nature of selection crieria.* HUD will include in the selection criteria referred to in paragraph (b)(1) any objective measures of housing and other need, project merit, or efficient use of resources that HUD determines are appropriate and consistent with the statute under which the assistance is made available.

(c) *Effective date.* This section applies to any applications for assistance subject to this subpart that the Department solicits or receives on or after [insert effective date].

§ 12.14 Documentation of applications and decisions.

(a) *Written applications.* HUD will award or allocate assistance subject to this subpart only in response to a written application in a form on format approved in advance, except where other award or allocation procedures are specified in statute.

(b) *Documentation of decisions on applications to HUD*—(1) *Basis for provision or denial of assistance.* HUD will ensure that documentation and other information regarding each application submitted to HUD for assistance subject to this subpart are sufficient to indicate the basis on which HUD provided or denied the assistance.

(2) *Public inspection.* HUD will make available for public inspection each application, and all related documentation and other information referred to in paragraph (b)(1), including any written indication of support that HUD received for an applicant's submission. Public inspection will be for a period of at least five years, beginning not less than 30 calendar days after the date on which the assistance is provided. HUD will announce in the **Federal Register** where and how the public many inspect this information.

(c) *Documentation of decisions on applications to HUD recipients*—(1) *Basis for provision or denial of assistance.* Each recipient of assistance must ensure, in accordance with administrative instructions issued by HUD, that documentation and other information regarding any application submitted to the recipient for a subsequent award or allocation of the assistance by a competition are sufficient to indicate the basis upon which the recipient provided or denied the assistance.

(2) *Public inspection.* Each recipient of assistance must, in accordance with administrative instructions issued by HUD, made available for public inspection each application, and all related documentation and other information referred to in paragraph (c)(1), including any written indication of support that the recipient received for an applicant's submission. Public inspection must be for a period of at least five years, beginning not less than 30 calendar days afte the date on which the assistance involved is provided.

(d) *Effective dates.*—(1) *Paragraph* (a). Paragraph (a) of this section applies to all applications for assistance subject to this subpart that are solicited or received on or after [insert effective date].

(2) *Paragraphs* (b) *and* (c). Paragraphs (b) and (c) of this section apply to all decisions to provide or deny assistance subject to this subpart that are made on or after [insert effective date].

§ 12.16 Notice of funding decisions.

(a) *Notice by HUD.* HUD will publish a Notice in the **Federal Register** at least quarterly to notify the public of all decisions made by the Department to provide assistance subject to this subpart since the last notification.

(b) *Notice by States and units of general local government.* Each State and unit of general local government must, in accordance with administrative instructions issued by HUD, notify the public of any decision by the State or unit of general local government to award or allocate the proceeds of assistance subject to this subpart by a competition to a subsequent recipient.

(c) *Content of notice.* The notification referred to in paragraphs (a) and (b) will include:

(1) The name and address of each recipient of assistance;

(2) The name or other means of identifying the project, activity, or undertaking for each such recipient;

(3) The dollar amount of the assistance for each project, activity, or undertaking;

(4) The citation to the statutory, regulatory, or other criteria under which the decision to provide assistance was made; and

(5) Such additional information as HUD (or in accordance with administrative instructions issued by HUD, the State or unit of general local government) deems appropriate for a clear and full understanding of the funding decision.

(d) *Effective date*—(1) *Paragraph* (a). Paragraph (a) of this section applies to all decisions to provide assistance that are made on or after [insert effective date].

(2) *Paragraph* (b). Paragraph (b) of this section applies to all decisions made on or after [insert effective date] to award or allocate the proceeds of assistance subject to this subpart to a subsequent recipient.

Subpart C—Disclosure by Applicants

§ 12.30 Definitions.

As used in this subpart:

Assistance subject to this subpart or *assistance* means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. For purposes of § 12.32, if the assistance is provided to a State or

to a unit of general local government, the term also includes the award or allocation of the assistance by the State or by the unit of general local government. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR)(48 CFR chapter 1). The term includes those elements of the following programs that make assistance available for specific projects or activities (HUD will add other programs, as appropriate):

(1) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(2) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.

(3) Applications for grant amounts for a specific project or activity under the Rental Rehabilitation Grant program under 24 CFR part 511 made to:

(i) A State grantee under subpart D;

(ii) A unit of general local government or a consortium of units of general local government receiving funds from a State or directly from HUD (whether or not by formula) under subparts D, F, and G; and

(iii) HUD, for technical assistance under § 511.3.

(Excludes formula distributions to States, units of general local government, or consortia of units of general local government under subparts D and G, within-year reallocations under subpart D, and the HUD-administered Small Cities program under subpart F.)

(4) Applications for grant amounts for a specific project or activity under title I of the Housing and Community Development Act of 1974 made to:

(i) HUD, for a Special Purpose Grant under section 105 of the Department of Housing and Urban Development Reform Act of 1989 for technical assistance, the Work Study program, or Historically Black colleges;

(ii) HUD, for a loan guarantee under 24 CFR part 570, subpart M;

(iii) HUD, for a grant to an Indian tribe under section 702 of the Department of Housing and Urban Development Reform Act of 1989;

(iv) HUD, for a grant under the HUD-administered Small Cities program under 24 CFR part 570, subpart F; and

(v) A State, metropolitan city, or urban county under 24 CFR part 570. (Excludes formula distributions to States and to units of general local government under 24 CFR part 570, and Special Purpose Grants to Insular Areas or for the correction of formula errors under section 105 of the Department of Housing and Urban Development Reform Act of 1989.)

(5) Applications for grant amounts for a specific project or activity under the Emergency Shelter Grants program under 24 CFR part 576 made to a State or to a unit of general local government, including a Territory.

(Excludes formula distributions to States and units of general local government (including Territories); reallocations to States, units of general local government (including Territories), and non-profit organizations; and applications to an entity other than HUD or a State or unit of general local government.)

(6) Transitional Housing under 24 CFR part 577.

(7) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(8) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(9) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(10) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped under section 162 of the Housing and Community Development Act of 1987 and Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968).

(11) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(12) Low-Rent Housing Opportunities under 24 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Child Care under section 117 of the Housing and Community Development Act of 1987.

(26) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily and nonresidential).

(27) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

Knowingly means having actual knowledge of, or acting with deliberate ignorance of or reckless disregard for, the requirements of § 12.32 (a), (b), or (c).

Materially means in some significant respect or to some significant degree.

Other government assistance includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be, made available with respect to the project or activities for which the assistance is sought.

§ 12.32 Disclosure by applicants.

(a) *Required disclosures.*—(1) *In general.* Each applicant that submits an application for assistance subject to this subpart to HUD, or to a State or to a unit of general local government, for a specific project or activity must make the disclosures referred to in paragraph (b)(1), if the applicant has received, or can reasonably be expected to receive, an aggregate amount of all forms of such assistance in excess of $200,000 during the Federal fiscal year in which the application is submitted.

(2) *Receipt of assistance.* For purposes of determining the threshold of applicability under paragraph (a)(1):

(i) Assistance subject to this subpart is considered to have been received when the application for the assistance is submitted.

(ii) The amount of assistance subject to this subpart that is considered to have been received is the amount requested in the application or, if known at the time of the current application, the amount awarded.

(3) *Reasonable expectation of receiving assistance.* For purposes of determining the threshold of applicability under pargraph (a)(1), an applicant will be deemed to have a reasonable expectation of receiving the

following amounts of assistance subject to this subpart during the Federal fiscal year in which the application is submitted:

(i) The full amount requested in any application for such assistance, including the current application, that was submitted during that fiscal year and that is pending before the Department or before any other entity; and

(ii) The amount of any such assistance that is likely during that Federal fiscal year—

(A) To be made available on a formula basis to the applicant by the Department or by any other entity; or

(B) To be generated in the form of program income, as defined in 24 CFR part 85.

(4) *Certain applicants.* Each applicant that submits an application under paragraph (a)(1) to an entity other than HUD, a State, or a unit of general local government, must make the required disclosures to HUD, if the application is required by statute or regulation to be submitted to HUD for approval, environmentnal review, rent determinations, or for any other purpose.

(5) *Instructions to States and units of general local government.* HUD will issue administrative instructions to States and units of general local government with resepct to their responsibilities under this paragraph (a), including the timing of the required disclosures for applicants, and the timing and content of reporting those disclosures to HUD.

(6) *Prohibition of assistance.* In no event may HUD, or a State or a unit of general local government, enter into a contract under the program involved to provide the assistance, or otherwise commit the assistance, until the applicant has made the disclosures required by paragraph (b)(1).

(b)(1) *Content of disclosure.* Applicants that meet the assistance threshold under paragraph (a)(1) must disclose the following information:

(i) *Other government assistance.* Any other government assistance that is, or is expected to be, made available with respect to the project or activities for which the assistance is sought.

(ii) *Interested parties.* The name and pecuniary interest of—

(A) Any developer, contractor, or consultant involved in the application for the assistance, or in the planning, development, or implementation of the project or activity involved; and

(B) Any other person who has a pecuniary interest in the project or activities for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

(iii) *Sources and uses of funds.* A report, as provided in administrative instructions issued by HUD, specifying the expected sources of funds that are to be made available for the project or activity, and the expected uses to which those funds are to be put. The report must identify the gross amount of funds from all sources, including (but not limited to):

(A) Both governmental and non-governmental sources of funds; and

(B) Private capital resulting from tax benefits.

(2) *Definitions.* (i) For purposes of paragraph (b)(1)(i), other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

(ii) For purposes of paragraph (b)(1)(ii), residency of an individual in housing for which assistance subject to this subpart is being sought is not, by itself, considered a pecuniary interest.

(iii) For purposes of paragraph (b)(1)(iii), a source of funds is expected to be made available, and a use of funds is expected to be put to a particular purpose, if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the source or use will be forthcoming.

(c) *Updating disclosures.*—(1) *In general.* During the period in which an application for assistance subject to this subpart is pending, or in which the assistance is being provided, the applicant must report to HUD, or to the State or unit of general local government, as appropriate:

(i) Any information referred to in paragraph (b)(1) that the applicant should have disclosed under paragraph (a) with respect to the application, but failed to do so.

(ii) Any information referred to in paragraph (b)(1) that would have been subject to disclosure under paragraph (a), but that initially arose after the time for making disclosures under that paragraph, including the name and pecuniary interest of any person referred to in paragraph (b)(1)(ii)(B) who did not have a pecuniary interest in the project or activity that exceeded the threshold in that paragraph at the time of application, but that now exceeds the threshold.

(iii) With regard to changes in information that was disclosed under paragraph (b)(1), (c)(1)(i), or (c)(1)(ii):

(A) Any change in other government assistance under paragraph (b)(1)(i) that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

(B) Any change in the amount of the pecuniary interest of a person under paragraph (b)(1)(ii) that was previously disclosed by the applicant and that exceeds the amount of the previously disclosed interest by $50,000 or by 10 percent of the interest (whichever is lower).

(C) Any change in a source of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent (whichever is lower).

(D) Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent (whichever is lower).

(2) *Period of coverage.* For purposes of paragraph (c)(1):

(i) An application for assistance subject to this subpart will be considered to be pending from the time the application is submitted until the Department communicates its decision with respect to the application to the applicant.

(ii) Assistance subject to this subpart will be considered to be provided from the time that the applicant receives the assistance until the applicant has discharged all its obligations under the terms of the assistance, including the submission of any required reports.

(3) *Instructions.* HUD will establish in administrative instructions the time for reporting under paragraph (c)(1) both to HUD and to States and units of general local government.

(d) *Availability of disclosed material*—(1) *Disclosures to HUD.* HUD will make all information disclosed to it under this subpart available for public inspection. HUD will publish a Notice in the **Federal Register** indicating where and how the public may inspect this information, and for how long it will be available for inspection.

(2) *Disclosures to States and units of general local government.* HUD will issue administrative instructions governing the retention and availability to the public of information disclosed under this subpart to States and units of general local government.

(e) *Effective date.* This section applies to all applications for assistance subject to this subpart submitted to HUD, or to a State or to a unit of general local government, on or after [insert effective date].

§ 12.34 Sanctions and remedies.

(a) *Administrative remedies.* If HUD receives or obtains information providing a reasonable basis to believe

that a violation of paragraph (a), (b), or (c) of § 12.32 has occurred, HUD will:

(1) If a recipient of the assistance has not been selected, determine whether to terminate the selection process or take other appropriate action; and

(2) If a recipient of the assistance has been selected, determine whether to:

(i) Void or rescind the selection, subject to review and determination on the record after opportunity for hearing;

(ii) Impose sanctions upon the violator, including debarment pursuant to 24 CFR part 24, subject to review of the determination on the record and after opportunity for hearing;

(iii) Recapture any funds that have been disbursed;

(iv) Permit the violating applicant that has been selected to continue to participate in the program; or

(v) Take any other actions that HUD considers appropriate.

HUD will publish in the **Federal Register** a descriptive statement of each determination made and action taken under this paragraph (a).

(b) *Civil money penalties.* If any person knowingly and materially violates any provision of § 12.32 (a), (b), or (c), HUD may impose a civil money penalty not to exceed $10,000 for each violation. Imposition of a civil money penalty under this paragraph (b) must be in accordance with 24 CFR part 30.

Subpart D—Limitation on Housing Assistance

§ 12.50 Definitions.

As used in this subpart:

Assistance subject to this subpart means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided under a program administered by the Department for use in, or in connection with, a specific housing project. The term includes assistance for—

(1) The acquisition, construction, rehabilitation, conversion, modernization, renovation, or demolition of a housing project; and

(2) The operation of a housing project.

The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR)(48 CFR chapter 1), and assistance for the provision of services in a housing project, such as child care, and upgrading the management of a housing project. The term includes those elements of the following programs that make assistance available for a specific housing project (HUD will add other programs, as appropriate):

(i) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(ii) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.

(iii) Community Development Block Grants under 24 CFR part 570 (only loan guarantees under subpart M and grants to Indian tribes under section 702 of the Department of Housing and Urban Development Reform Act of 1989).

(iv) Transitional Housing under 24 CFR part 577.

(v) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(vi) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(vii) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(viii) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped under section 162 of the Housing and Community Development Act of 1987).

(ix) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(x) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(xi) Low-Rent Housing Opportunities under 24 CFR part 904.

(xii) Indian Housing under 24 CFR part 905.

(xiii) Public Housing Development under 24 CFR part 941.

(xiv) Comprehensive Improvement Assistance under 24 CFR part 968.

(xv) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(xvi) Nehemiah Grants under 24 CFR part 280.

(xvii) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily projects).

Housing project means property containing five or more dwelling units that is to be used for primarily residential purposes. The term includes (but is not limited to) living arrangements such as independent group residences, board and care facilities, group homes, and transitional housing. It does not include facilities that provide primarily non-residential services, such as intermediate care facilities, nursing homes, and hospitals.

§ 12.52 Limitation on housing assistance.

(a) *Determination of amount of assistance; certification*—(1) *In general.* Before HUD makes any assistance subject to this subpart available with respect to a housing project for which other government assistance described in § 12.32(b)(1)(i) is, or is expected to be, made available, HUD will determine, and execute a certification, that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance.

(2) *Determination of amount of assistance.* (i) The Department will issue administrative instructions specifying the standards to be followed in making the determination under paragraph (a)(1). The instructions may be on a program-by-program or other basis, and may, in the Department's discretion, establish limits on the amount of assistance subject to this subpart that may be used for the housing project, or may provide for the full or partial negotiation of the amount of assistance for individual housing projects.

(ii) The instructions will consider the aggregate amount of assistance, from the Department and from other sources, that is necessary to ensure the feasibility of the assisted activity. The Department will take into account all the factors relevant to feasibility, including (but not limited to) past rates of returns for owners, sponsors, and investors; the long-term needs of the project and its tenants; and the usual and customary fees charged in carrying out the assisted activity.

(iii) In no event may the Department permit the aggregate amount of assistance to exceed the amount that the Department determines is necessary to make the assisted activity feasible. The use of related assistance in a housing project is not prohibited, provided that the aggregate of the assistance subject to this subpart and the related assistance does not exceed the amount necessary to make the assisted activity feasible.

(iv) The Department will inform each applicant for assistance for a housing project about the requirements of this section and the administrative instructions referred to in this paragraph (a) at the earliest practicable stage in the application process. The Department will also work with the applicant to ensure that the applicant understands the applicability of the administrative instructions to the specific housing project.

(3) *Taking related assistance into account.* (i) If the Department determines that the aggregate assistance from the Department and from related assistance for a housing project under paragraph (a)(2)(ii) exceeds the amount that the Department determines is necessary to make the assisted activity feasible, HUD will consider all options available to enable it to make the required certification.

(ii) Among other things, HUD may impose a dollar-for-dollar, or equivalent, reduction in the amount of the HUD assistance to reflect the amount of the related assistance. In grant programs, this could result in a reduction of any grant amounts not yet drawn-down. In loan programs or mortgage insurance programs, this could result in a reduction in the outstanding loan amount. In the Section 8 program, this could result in a dollar-for-dollar reduction in the amount of the Section 8 subsidy. The administrative instructions referred to in paragraph (a)(2) will contain guidance on the options that HUD may use with respect to the housing project.

(b) *Subsequent adjustments*—(1) *In general.* HUD will adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as HUD determines appropriate, for any changes that are, or should have been, reported under § 12.32(c), or at the time of any request by the applicant for a change in the assistance amount. Each contract that provides assistance to a housing project will contain a provision regarding subsequent adjustments under this paragraph (b)(1).

(2) *Amount of adjustment.* In determining the amount of any adjustment, HUD will consider all relevant factors, including (but not limited to) the extent to which the changes affect the certification under paragraph (a)(1) of this section, the effect of the adjustment on the financial viability of the housing project and on any tenants, and the extent to which the need for an adjustment may be attributable to the failure of the applicant to make the disclosures required under § 12.32(a), (b), or (c).

(c) *Location of certification.* The certification referred to in paragraph (a)(1) will be retained in the project file for the housing project.

(d) *Effective date.* Paragraphs (a) and (b) apply to any assistance subject to this subpart that is made available on or after [insert effective date].

Dated: June 11, 1990.

Jack Kemp,

Secretary,

[FR Doc. 90–14115 Filed 6–18–90; 8:45 am]

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Tuesday
June 19, 1990

Part V

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Part 888

Annual Rent Adjustments for Section 8 Assisted Housing; Retroactive Housing Assistance Payments; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-90-1484; FR-2745-P-01]

RIN 2502-AE81

Annual Rent Adjustments for Section 8 Assisted Housing; Retroactive Housing Assistance Payments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement portions of section 801 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (Reform Act), by providing the criteria under which HUD will make retroactive Housing Assistance Payments to owners of section 8 projects for which the use of comparability studies as an independent limitation on annual rent adjustments, for the period from October 1, 1979 until the effective date of this rule, resulted in the reduction of rents or the failure to increase the rents to the entire amount permitted by the Annual Adjustment Factors; or to owners of section 8 projects whose contracts require them to request annual adjustments and who will certify that they did not request such adjustments because they anticipated reductions in rents. Under this rule, owners eligible for retroactive payments would also have the opportunity to request a one-time determination of the contract rent upon which to base future rent adjustments.

DATES: Comments due July 19, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, 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 during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) 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) 708–4337. (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) 708–2084).

FOR FURTHER INFORMATION CONTACT: Moderate Rehabilitation program: Lawrence Goldberger, Office of Elderly and Assisted Housing, room 6130, telephone (202) 708–0720; all other programs: James Tahash, Office of Multifamily Housing, room 6182, telephone (202) 708–3944; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. TDD number for the hearing- and speech-impaired (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the 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 in this document under the heading, *Other Matters*. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent by July 19, 1990, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Applicability

This proposed rule would implement section 801 (a) and (d) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (Reform Act). The rule would provide the criteria and procedures under which eligible project owners may receive retroactive housing assistance payments and request one-time contract rent determinations. (Section 801(c) of the Reform Act amends section 8 of the U.S. Housing Act of 1937 (1937 Act), clarifying HUD's ability to use comparability studies in the future as a basis for adjusting contract rents. A proposed rule providing for the future conduct of comparability studies will be published at a later date.)

This rule would apply to all section 8 projects whose contract rents are adjust by Annual Adjustment Factors (AAFs) under 24 CFR part 888, which includes all such project-based section 8 contracts under New Construction (part 880); Substantial Rehabilitation (part 881); State Finance Agencies (part 883); section 515 Farmers Home Administration (part 884); section 202 Elderly or Handicapped Housing (part 885); Special Allocations (part 886, subpart A (Loan Management Set-Aside) and subpart C (Property Disposition)); and Moderate Rehabilitation (part 882, subparts D, E, and H). Section V of this document describes the rule for the Moderate Rehabilitation program, and section IV describes the rule for the remainder of the programs.

The rule would not apply to units assisted under the section 8 Certificate or Housing Voucher programs. HUD interprets the language in section 801(a) of the Reform Act and its legislative history, contained in the floor speeches in both the House of Representatives and the Senate, as contemplating projects, rather than individual units covered by a single contract, such as in the Certificate program. Since the section 8 Certificate and Housing Voucher programs are tenant-based assistance programs, HUD has concluded that this provision of section 801 does not apply to those programs. (The project-based Certificates program would also be excluded from the coverage of this rule, since the program is of such recent nature that it has not been the subject of comparability studies.)

The rule also would not apply to any section 8 project whose rents are adjusted using the budget approach, such as some section 202 projects (part 885) and some Special Allocations projects (part 886).

Under section 801(a)(2)(B) of the Reform Act, the retroactive payments provisions of the rule would not apply to any project owner (or agent) that has been a named party to litigation regarding the authority of the Secretary to use comparability studies to limit

rental adjustments under section 8(c)(2) of the 1937 Act, where the litigation resulted in a final judgment that is not appealable (including any settlement agreement of that litigation or of threatened litigation) before December 15, 1989.

II. Background

Section 8 of the 1937 Act authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. The several section 8 programs (known collectively as the section 8 Housing Assistance Payments Program) provide assistance payments for lower income families for a variety of housing options.

Under these programs, HUD (or a Contract Administrator, such as a public housing agency (PHA) or State agency) enters into a Housing Assistance Payments (HAP) contract with an owner of a rental housing project to make housing assistance payments to the owner on behalf of eligible families. The housing assistance payment represents the difference between the contract rent, which is the maximum monthly rent that may be charged for a unit, and the rent that may be charged the tenant family under section 3(a) of the 1937 Act, which is an amount based on the tenant family's adjusted income.

Initial contract rents, plus any allowances for utilities, generally may not exceed area-wide Fair Market Rents (FMRs), established and published by HUD annually in accordance with 24 CFR part 888, subpart A. However, the regulations permit HUD to approve initial contract rents that exceed the applicable FMR by up to 20 percent, if necessary, for special circumstances or to implement a local Housing Assistance Plan.

Section 8(c)(2)(A) of the 1937 Act requires that the HAP contract between HUD and a project owner provide for adjustments, at least annually, in the maximum monthly rents for units covered by the contract. The adjustments reflect changes in the fair market rentals established in the area for similar types and sizes of dwelling units or, if HUD determines, on the basis of a reasonable formula. Section 8(c)(2)(C) further provides that any adjustments made in the maximum rents may not result in material differences between rents charged for assisted and unassisted units of similar quality, type, and age in the same market area, as determined by the Secretary. (Under HUD regulations, any difference that existed at the time initial contract rents were set, as described above, is not considered in any determination of whether a material difference exists.)

Under section 8(c)(2) of the 1937 Act and in accordance with 24 CFR part 888, Subpart B, HUD publishes Annual Adjustment Factors (AAFs) for four Census Regions, 72 metropolitan areas, and the States of Alaska and Hawaii. AAFs are percentage figures, based on a formula using rent and utility data from the Consumer Price Index (CPI) and using the Bureau of the Census American Housing Surveys (AHS). On the anniversary dates of HAP contracts each year, the AAFs are used to adjust the maximum rents that may be charged under the contracts. Under some contracts, the rents are adjusted automatically each year; however, under other contracts, owners must request an adjustment.

For a project where HUD (or the Contract Administrator) has had reason to believe that application of the AAFs would result in a material difference between rents charged by the project and by similar unassisted housing in the same market area (except where the difference existed when contract rents were initially set), HUD interpreted section 8(c)(2)(A), its implementing regulations, and the corresponding HAP contracts as requiring that the material difference be addressed, and as providing authority to conduct a comparability study as an alternative method of adjusting rents for the project. (In the Moderate Rehabilitation program, the alternative method is known as a rent reasonableness test.) Where a comparability study indicated that a material difference would result from application of the AAFs, HUD (or the Contract Administrator) used the study as the basis for adjusting the contract rents—either by reducing the rents or by limiting the increase that would have resulted from applying the AAFs. (In section 142(d) of the Housing and Community Development Act of 1987, Congress amended section 8(c)(2)(C) to prohibit the reduction of contract rents for newly constructed, substantially rehabilitated, or moderately rehabilitated projects as a result of comparability studies of AAFs, unless the project has been refinanced in a manner that reduced the periodic payments of the owner.)

III. 1989 Reform Act

Retroactive Payments

Section 801(a) of the Reform Act directs HUD to make retroactive housing assistance payments, on the request of a project owner, to a project for which the use of a comparability study by HUD (or the Contract Administrator), as an independent limitation on the amount of rental adjustment that would have resulted from application of the AAF, resulted in either a reduction of the maximum monthly rents or a limitation on the amount of increase otherwise permitted by the AAF. Section 801(a) also extends the eligibility for retroactive payments to any project with a HAP contract that requires the owner to request adjustment in rents, where the owner certifies that a request for adjustment was not made because the owner anticipated a reduction in rents.

Retroactive payments are authorized for the period beginning with Federal fiscal year (FY) 1980 to the effective date of this rule. The amount of the payments is based on a formula set out in section 801(a) for recalculating contract rents for that period, which is described in the proposed rule. Under section 801(b), the payments are to be made over a three-year period to the extent approved in subsequent appropriations acts.

Section 801(d)(1) of the Reform Act provides that project owners eligible for retroactive payments under section 801(a), as described above, may request from HUD a one-time contract rent determination on which to base future annual adjustments. The contract rent would be the greater of the contract rent currently approved by the Secretary under section 8(c)(2), or as calculated under the statutory formula, described in the proposed rule.

IV. Proposed Rule

New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations

Under the rule, as it would apply to projects under the New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations programs, HUD (or the Contract Administrator) would recalculate the total rent adjustments by applying the applicable AAF for FY 1980 to the FY 1979 contract rent minus the debt service. The debt service would then be added back into the formula to provide the adjusted contract rent for FY 1980. The recalculated FY 1980 contract rent (again minus debt service) would then be used to calculate the rent adjustment for the new year (FY 1981). The same process would continue for each year until the efective date of this rule.

As retroactive payment, HUD would pay the amount, if any, by which the total rent adjustments, calculated in the

manner described above, exceed the total adjustments actually paid. However, no eligible project owner would be paid an amount less than 30 percent of the aggregate of the full contract rent (*i.e.*, including debt service) multiplied by the applicable AAF minus the amount of rent adjustments actually paid, for the same time period. Payments would be based on the number of units occupied (including vacancies eligible for payment, in accordance with HUD regulations) during the time period for which the retroactive payments are made.

The following example illustrates how the formula would apply to the programs listed above:

Example 1

Project A consists of 100 two-bedroom units, which contract rents of $430 in 1979. The per-unit per-month debt service is $250. In FY–1980, the applicable AAF for Project A was 1.062, which would have allowed a rent increase to $457. After a comparability study, HUD limited the rent increase to $435. The results of another comparability study in 1982 showed that the project's rent of $467 was the comparable rent, so no increase was allowed. The calculations below, based on 100 percent occupancy, demonstrate the statutory formula for adjusting rents and calculating the retroactive payment for Project A.

(a) AAF rent ($430 × 1.062 = $457)
$457 × 100 units × 12 months..... $548,400
(b) Rent actually approved/paid ($435)
$435 × 100 units × 12 months..... 522,000
(c) Rent calculated without debt service [($430 − $250) × 1.062 = $192*, $192 + $250 = $442] $442 × 100 units × 12 months.....530,400

* The recalculated rent, minus debt service ($192), would be used to recalculate the rent on the next anniversary date for FY–1981. The debt service would then be added back into the final computation, as shown above, to determine the contract rent in effect for that contract year. These same calculations are repeated for each year.

The following chart, on a per-unit basis, shows the calculations for Project A from 1980 to 1990. In addition to the limited increase in 1980, Project A was allowed no rent increase in 1982.

Year	AAF	AAF rent	Rent approved and paid	Rent calculated without debt service
1980	1.062	457	435	442
1981	1.073	491	467	456
1982	1.082	532	467	473
1983	1.078	574	504	491
1984	1.072	616	541	509
1985	1.064	656	576	526
1986	1.059	695	610	543
1987	1.051	731	642	558
1988	1.048	766	673	573
1989	1.032	791	695	584
1990	1.021	808	710	591

Totals for Project A, based on 100 units fully occupied each year (Rent per unit × 100 units × 12 months)

AAF rent	$8,540,000
Less paid	(7,584,000)
	$956,400
	×.30
	$286,920
Rent without debt service	$6,895,200
Less paid	(7,584,000)
	0

Project A would be eligible for a retroactive payment of $286,920, because the retroactive payment may not be less than 30 percent of the AAF rent less the amount approved and paid.

Project owners eligible for retroactive payments may request from HUD (or the Contract Administrator) for a one-time contract rent determination on which to base future annual adjustments. The new contract rent under this provision of the rule would be the greater of the contract rent currently approved by the Secretary, or as calculated under the statutory formula [(Contract Rent − Debt Service) × AAF + Debt Service]. (The contract rent reflected in the most recent HAP contract amendment signed by both parties, *i.e.*, the project owner and HUD (or the Contract Administrator), will be considered the "contract rent currently approved by the Secretary.")

For fully assisted projects, the new contract rent would be effective on the first of the month following notification of owners of the rent determination. For partially assisted projects, the effective date would be on the first of the month following completion of tenant notification procedures. Project owners may choose to request only the one-time contract rent determination and to forgo any retroactive payment for which they are eligible.

Example 2 illustrates the one-time rent redetermination:

Example 2

Project A (see Example 1) has a currently approved contract rent of $710 on its two-bedroom units. After adjusting the rents under the statutory formula [(Contract Rent − Debt Service) × AAF + Debt Service] from FY–1980 to the effective date of this rule, the recalculated contract rent is $591. The currently approved rent of $710 is greater than the recalculated rent of $591. Therefore, Project A's one-time contract rent determination would result in a new contract rent of $710.

Moderate Rehabilitation Program

Contract rents for the Moderate Rehabilitation program are the sum of two components—the base rent and rehabilitation debt service. Under 24 CFR 882.410(a)(1), changes in rents as a result of the annual adjustment may not exceed the amount established by multiplying the AAF by the base rent, which is the cost of owning, managing, and maintaining the rehabilitated unit (24 CFR 882.408(c)(2)). Unlike the programs described above, the rehabilitation debt service has always been deducted before applying the AAF to adjust contract rents.

Since the statutory formula for recalculating total rent adjustments and making retroactive payments requires deducting debt service before applying the AAF to the contract rent, HUD would, for purposes of the Moderate Rehabilitation program, consider the rehabilitation debt service as the debt service contemplated by section 801(a). Therefore, under the rule as applied to the Moderate Rehabilitation program, the debt service that would be deducted before applying the AAF would be the amount of the contract rent that is attributable to rehabilitation debt service (*i.e.*, the difference between the base rent and the contract rent). The applicable AAF would be applied to the base rent; the rehabilitation debt service, a fixed dollar amount, would then be added to the adjusted base rent to provide the adjusted contract rent. The adjusted base rent would then be used to adjust the contract rent for the next year. Since this method of recalculating rent adjustments would result in a final figure that is no less than would have resulted by adjusting the rents as required by HUD regulations and by the HAP contracts, there is no need to apply the test of whether the recalculated rent adjustments are less than 30 percent of the amount that would have resulted if debt service had not been deducted. Payments would be based on the number of units occupied (including vacancies eligible for payment as described in HUD regulations) during the time period for which the retroactive payments are made.

The following example illustrates how the formula would apply to Moderate Rehabilitation projects.

Example 3

Project B consists of 100 two-bedroom units, with contract rents of $450 in 1981. The per-unit per-month base rents were $250, and the per-unit rehabilitation debt service, $200. In FY–1981, the rents of two New Construction projects in the same area were reduced on the basis of comparability studies. The applicable AAF for FY–1982 was 1.082, which would allow a contract rent increase to $471 for Project B. However, fearing a reduction of rents, the owner of Project B did not request an adjustment for FY–1982. Project B requested and received a full adjustment in each year thereafter, except in 1986 when, for reasons other than a belief rents would be reduced, the owner chose not to request an adjustment. The calculations below, based on 100 percent occupation, demonstrate the manner in which the retroactive payment for Project B would be calculated.

AAF rent ($250 (base rent) × 1.082 =
$271 (adjusted base rent) $271 +
200 (rehabilitation costs) = $471)
$471 × 100 units × 12 months..... $565,200

Rent actually approved/paid ($450)
$450 × 100 units × 12 months..... $540,000

The following chart, on a per-unit basis, shows the calculations for Project B from 1982 to 1990:

Year	AAF	AAF rent	Rent approved and paid
1982	1.082	471	450
1983	1.078	493	470
1984	1.072	514	490
1985	1.064	534	509
1986	1.059	534	509
1987	1.051	551	525
1988	1.048	568	541
1989	1.032	580	552
1990	1.021	588	560

Totals for Project B, based on 100 units fully occupied each year (Rent per unit × 100 units × 12 months):

AAF rent	$5,799,600
Less paid	(5,527,200)
Retroactive payment	$272,400

Moderate Rehabilitation project owners eligible for retroactive payments may also request from the PHA a one-time contract rent determination on which to base future annual adjustments. The contract rent under this provision of the rule would be the greater of the contract rent currently approved or as calculated under the statutory formula, described above. (The contract rent reflected in the most recent HAP contract amendment signed by both parties, *i.e.*, the project owner and the PHA as Contract Administrator), will be considered the "contract rent currently approved by the Secretary.")

The contract rent, as determined under this provision, would be effective, for fully assisted projects, on the first of the month following notification of owners of the rent determination and, for partially assisted projects, on the first of the month following completion of tenant notification procedures. Project owners may choose to request only the one-time contract rent determination and to forgo any retroactive payment for which they are eligible.

Example 4 illustrates the one-time redetermination for Moderate Rehabilitation projects:

Example 4

Project B (see Example 3) has a currently approved contract rent of $560 on its two-bedroom units. After adjusting the rents using the full AAF for each year in which the owner requested an adjustment, as well as for each year for which a claim is made, from FY–1980 to the effective date of this rule, the recalculated contract rent is $588. The recalculated rent of $588 is greater than the currently approved rent of $560. Therefore, Project B's onetime contract rent determination would result in a contract rent of $588.

Procedures for Payments

Section 801(b) requires HUD to provide retroactive payments over a three-year period beginning on the effective date of this rule, to the extent that the payments are approved in subsequent appropriations acts. Project owners would be notified of their eligibility for retroactive payments, and would be allowed 60 days in which to respond with a request for payments. Owners desiring to request payments must submit occupancy documentation for the period from October 1, 1979 to the effective date of this rule, if available. Those owners whose HAP contracts require them to request annual rent adjustments would also be required to certify that such requests were not made because of anticipated reductions, and to state the year or years such requests were not made.

The notice of eligibility would be sent to current owners of projects only. Owners would be required to certify that they are entitled to the entire amount of the payments. In the event a current owner is unwilling to certify, the owner would be required to present documentation, signed by both the current owner and any former owner, of an agreement between them of the proportionate share for which each is eligible.

Requests for contract rent determinations would also be submitted at the time requests for payments are submitted.

Owners would be notified of the new contract rent determination and the amount of any retroactive payment due in as timely a manner as possible. The new contract rent would become effective as described above and in the proposed rule. When funds are appropriated for the retroactive payments, HUD would publish a **Federal Register** Notice with instructions for claiming the payments.

Since the retroactive payments represent HAP payments, they would be subject to the same rules and procedures for HAP payments under applicable HUD regulations and HAP contracts, including any restrictions on distribution of surplus cash.

Under HAP contracts, owners have agreed to maintain their properties in a decent, safe, and sanitary condition. HUD field staff, mortgagees, or contract administrators, according to program regulations (24 CFR 880.612, 881.612, 882.516, 883.713, 884.217, 886.123, and 886.323), must inspect units and may make HAP payments contingent on the satisfaction of inspection findings. Under the proposed rule, if deficiencies reflected in a physical inspection report completed by HUD, the mortgagee, or the Contract Administrator have not been addressed to the satisfaction of HUD by the date the retroactive payment is deposited into the project account, the project owner would be required, as with other HAP payments, to address the deficiencies before the funds become available for surplus cash distribution.

Owners required to adjust the amount of the annual deposit to Reserve for Replacement accounts by the amount of the annual rent adjustment would be required to deposit a proportionate share of the retroactive payment to those accounts. For example, if the total housing assistance payment paid were $400,000, and the retroactive payments calculated were $40,000, the owner would be required to deposit into the Reserve for Replacement account a portion of the retroactive payment that is equal to the 10 percent increase in rental payments. Thus, the owner would be required to deposit 10 percent of the retroactive payment, or $4,000, into the Reserve for Replacement account.

The process used to establish rent levels is dependent on a variety of calculations and information. Any rent levels established as a result of this rule are subject to correction if future audit or review reveals that they were incorrectly established due to an error in the determination process.

V. Other Matters

The collection of information requirements for this program were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

Description	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
Programs Under Parts 880, 881, 883, 884, 885, 886					
Owners:					
Request for rent determination; claim for payment	583	2	1	.50	292
Documentation of occupany rate	200	1	1	1.5	300
State agencies:					
Initial notification; notification of eligiblity, processing payments	30	3	1	.5	45
Calculation of payment	30	2	1	.75	45
Moderate Rehabilitation Program					
Owners:					
Request for rent determination; Statement for certification; Claim for payment	250	3	1	.75	187.5
PHAs:					
Initial notification; notification of eligibility; processing payments	250	3	1	.5	375
Determination of occupancy rate; calculation of payment	250	2	1	.75	375
Total annual burden					1,619.5

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would 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.

An environmental assessment is unnecessary, since statutorily required establishment and review of rent schedules that do not constitute a development decision affecting the physical condition of specific project areas or building sites is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.21(*l*).

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule would not have a potential significant impact on the formation, maintenance, and general well-being of the family and, thus, is not subject to review under that Order. Adjustments in contract rents does not affect the amount of rent a tenant family in section 8 assisted housing is required to pay, which is an amount based on the tenant family's income.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under that Order. The rule would affect the amount of housing assistance payments paid by HUD to owners of Section 8 assisted projects.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would govern the procedures under which HUD would make retroactive housing assistance payments to owners of section 8 assisted projects.

This rule was listed in the Department's Semiannual Agenda of Regulations published at 55 FR 16226, 16244 on April 23, 1990, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 888

Grant programs; Housing and community development, Rent subsidies.

For the reasons stated in the preamble, part 888 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 888 would continue to read as follows:

Authority: Sections 5 and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437c and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In part 888, the heading for part 888 and for subpart B would be revised, and subparts C and D would be added, to read as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

* * * * *

Subpart B—Contract Rent Annual Adjustment Factors

* * * * *

Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

Sec.

888.301 Purpose and scope.

888.305 Amount of the retroactive Housing Assistance Payments.

888.310 Notice of eligibility for retroactive payments.

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888.320 One-time Contract Rent determination.

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

888.401 Purpose and scope.

888.405 Amount of the retroactive Housing Assistance Payments.

888.410 Notice of eligibility for retroactive payments.

888.415 Restrictions on retroactive payments.

888.4320 One-time Contract Rent determination.

* * * * *

Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

§ 888.301 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures that govern the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to [*insert effective date of final rule*] and a one-time Contract Rent determination for such eligible project owners.

(b) *Applicability.* This subpart applies to all project-based Section 8 Housing Assistance Payments Contracts under New Construction (part 880); Substantial Rehabilitation (part 881); State Finance Agencies (part 883); and Section 515 Farmers Home Administration (part 884). It also applies to those projects under Section 202 Elderly or Handicapped (part 885) and Special Allocations (part 886, subparts A and C) whose Contract Rents are adjusted by use of the Annual Adjustment Factors (AAFs), as described in subpart B of this part.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to [*insert effective date of final rule*]:

(1) The use of a comparability study by HUD (or the Contract Administrator), which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The HAP contract required a project owner to request annual rent adjustments, and the project owner certifies that a request was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.305 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.301(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to [*insert effective date of final rule*]. For purposes of establishing the amount of the retroactive payment only, the total rent adjustment will be an amount equal to the Contract Rent, minus the amount of the Contract Rent attributable to debt service, multiplied by the applicable AAF, for each year.

(b) *Calculating the retroactive payment.* HUD (or the Contract Administrator) will pay, as a retroactive Housing Assistance Payment, the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section, exceeds the rent adjustments actually paid for the same time period, except that in no event will any payment be an amount less than 30 percent of the aggregate of the full Contract Rent (adjusted for units occupied or qualifying for vacancy payments) multiplied by the applicable AAF, minus the sum of the rent adjustments actually paid for the same time period.

(c) *Occupancy rates.* Retroactive payments will be made only for units that were occupied, including units qualifying for vacancy payments, during the time period from October 1, 1979 to *[insert effective date of final rule].* When requesting retroactive payment, a project owner may submit documentation of occupancy rates for the same time period. If records are unavailable for the full time period, HUD (or the Contract Administrator) will establish an average occupancy rate from the three years immediately prior to the date of the request for payment.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to *[insert effective date of final rule],* where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 880.609(b), 881.609(b), 883.710(b), 884.109(c), 886.112(c), and 886.312(c) during the time period from October 1, 1979 to *[insert effective date fo final rule],* to reflect substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, will be deducted from the Contract Rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published in Federal Fiscal Years (FY) 1988 or 1989, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

(g) *Debt service.* For purposes of this section, debt service includes principal, interest, and the mortgage insurance premium, if any. For State Finance Agencies projects subject to 24 CFR part 883, debt service also includes the finance adjustment factor (FAF), if any.

§ 888.310 Notice of eligibility for retroactive payments.

(a) *Notice of eligibility.* HUD (or the Contract Administrator) will notify current owners of projects of the eligibility for retroactive payments. Eligible project owners must make a request for payment or a request for a one-time contract determination within 60 days from the date of the notice of eligibility.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.301(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.301 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979 to *[insert effective date of final rule],* if available.

(2) Owners whose HAP contract requires a request for annual rent adjustments must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a **Federal Register** Notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.320. Eligible owners may request a one-time contract rent determination even if they choose to forgo receiving retroactive

payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners requesting retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unwilling to certify must present documentation, signed by both the current owner and any former owner, of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

§ 888.315 Restrictions on retroactive payments.

(a) *Restrictions on distribution of surplus cash.* Retroactive payments for HUD-insured projects and other projects subject to limitations on the distribution of surplus cash will be deposited, in the manner of Housing Assistance Payments, into the appropriate project account. The payments will be subject to the same rules and procedures, described in HUD regulations and the HAP contracts, for distribution of surplus cash to project owners.

(b) *Replacement reserve.* Projects required by HUD regulations to maintain a replacement reserve account and to adjust the annual payment to the account each year by the amount of the rent adjustment must deposit into the account the proportionate share of any retroactive payment received, in accordance with HUD regulations and the HAP contract.

(c) *Physical condition of HUD-insured projects.* If a physical inspection of a HUD-insured project has been completed by the mortgagee, HUD, or the Contract Administrator, and the inspection report shows significant deficiencies that have not been addressed to the satisfaction of HUD by the date the retroactive payment is deposited into the project account, HUD will follow the applicable regulations with regard to such deficiencies before making the retroactive payment available for distribution of surplus cash.

§ 888.320 One-time Contract Rent determination.

(a) *Determining the amount of the new Contract Rent.* Project owners eligible for retroactive payments, as described in § 888.301(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in § 888.315. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by HUD (or the Contract Administrator); or

(2) An amount equal to the applicable AAF multiplied by the Contract rent minus debt service, calculated for each year from October 1, 1979 to *[insert effective date of final rule]*.

(b) *Currently approved rent.* The Contract Rent currently approved by HUD (or the Contract Administrator) is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both HUD (or the Contract Administrator) and the owner.

(c) *Effective date of new Contract Rent.* The new Contract Rent, determined under this section, will be effective as follows:

(1) For fully assisted projects, on the first of the month following notification to the owner of the determination.

(2) For partially assisted projects, on the first of the month following completion of the tenant notification procedures.

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

§ 888.401 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures that govern the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to *[insert effective date of final rule]* and a one-time Contract Rent determination for such eligible project owners.

(b) *Applicability.* This subpart applies to all Moderate Rehabilitation projects under 24 CFR part 882, subparts D, E, and H.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if a project owner did not request an annual rent adjustment for any year during the period from October 1, 1979 to *[insert effective date of final rule]*, and the project owner certifies that a request was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.405 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.401(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to *[insert effective date of final rule]*. Rents for that period will be recalculated, under the procedures set out in 24 CFR 882.410(a)(1), by applying the AAF for any year or years for which the owner certifies that an adjustment was not requested because of an anticipated reduction in rents. For each year thereafter, all rent adjustments made at the request of the owner at the time will be recalculated, under the procedures in 24 CFR 882.410(a)(1), to account for the new adjustments.

(b) *Calculating the retroactive payment.* HUD will pay, through the PHA as the Contract Administrator, as a retroactive Housing Assistance Payment the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section, exceeds the rent adjustments actually paid for the same time period.

(c) *Occupancy rate.* Retroactive payments will be made only for units that were occupied, including units qualifying for vacancy payments, during the time period from October 1, 1979 to *[insert effective date of final rule]*. When requesting retroactive payment, a project owner must submit documentation of occupancy rates for the same time period. If records are unavailable for the full time period, the PHA will establish an average occupancy rate from the three years immediately prior to the date of the request for payment.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to *[insert effective date of final rule]*, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph 9(a) of this section, and to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 882.410(a)(2) during the period from October 1, 1979 to [*insert effective date of final rule*], to reflect substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, will be deducted from the base rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was

published in Federal Fiscal Years (FY) 1988 or 1989, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

§ 888.410 Notice of eligibility for retroactive payments.

(a) *Notice of eligibility.* PHAs will notify current owners of projects, for which they are the Contract Administrators, of the eligibility for retroactive payments. Eligible project owners must make a request for payment or a request for a one-time contract determination within 60 days from the date of the notice of eligibility.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.401(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.401(a) and (b), and documentation of the occupancy rate for the period from October 1, 1979 to [*insert effective date of final rule*], if available.

(2) Owners must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a **Federal Register** Notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.420. Eligible owners may request a one-time contract rent determination even if they choose to forgo receiving retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners requesting retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unwilling to certify must present documentation, signed by both the current owner and any former owner, of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

§ 888.415 Restrictions on retroactive payments.

(a) *Restrictions.* Retroactive payments are subject to all regulations, procedures, or restrictions that apply to Housing Assistance Payments.

(b) *Review of initial rents.* Before calculating the amount of any retroactive payment, HUD will review whether rents were excessive when initially set.

§ 888.420 One-time Contract Rent Determination.

(a) *Determining the amount of the new Contract Rent.* Project owners eligible for retroactive payments, as described in § 888.401(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in § 888.415. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by the PHA; or

(2) An amount equal to the Contract Rent as adjusted to [*insert effective date of final rule*] under § 888.405(a).

(b) *Currently approved rent.* The Contract Rent currently approved by the PHA is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both the PHA and the owner.

(c) *Effective date of new Contract Rent.* The ne Contract Rent, determined under paragraph (a) of this section, will be effective as follows:

(1) For fully assisted projects, on the first of the month following notification to the owner of the determination.

(2) For partially assisted projects, on the first of the month following completion of the tenant notification procedures.

Dated: June 6, 1990.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90–14114 Filed 6–18–90; 8:45 am]

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federal register

Tuesday
June 19, 1990

Part VI

Environmental Protection Agency

40 CFR Parts 141 and 142

Drinking Water; National Primary Drinking Water Regulations: Total Coliforms; Corrections and Technical Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-3788-8]

Drinking Water; National Primary Drinking Water Regulations: Total Coliforms (Including Fecal Coliforms and E. coli)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: corrections and technical amendents.

SUMMARY: EPA is correcting errors and clarifying the preamble and the final rule promulgating National Primary Drinking Water Regulations (NPDWRs) for total coliforms (including fecal coliforms and *E. coli*). This final regulation was published in the **Federal Register** on June 29, 1989 (54 FR 27544).

EFFECTIVE DATES: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Paul S. Berger, Ph.D, Criteria and Standards Division, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 382-3039.

SUPPLEMENTARY INFORMATION: EPA promulgated NPDWRs for total coliforms (including fecal coliforms and *E. coli*) in a **Federal Register** notice published on June 29, 1989 (54 FR 27544). The preamble and regulation contained errors which are corrected in this notice. In addition, this notice clarifies some provisions in the June 29 notice.

I. Corrections to the Preamble

The following are corrections to the preamble, all of which are simply corrections of typographical errors.

On page 27545, column 1, next to the last line, change "of a variance of exemption;" to "of a variance or exemption;".

On page 27545, column 2, line 2, change "variance of exemption" to "variance or exemption".

On page 27546, in footnote 2 of Table 2, change the last sentence from "See 40 CFR 141.21a(b)(5)" to "See 40 CFR 141.21(b)(5)".

On page 27546, in footnote 1 of Table 3, third line from the end of the paragraph which reads "coliform rule (141.21a(d) but a sanitary survey" is changed to "coliform rule (141.21(d)), but a sanitary survey".

On page 27547, column 1, under *Analytical Methodology*, line 9, change "sample portions) of a single culture" to "sample portions or a single culture"; change the last bullet to: "EPA will promulgate analytical methods for *E. coli* before the effective date of the rule."

On page 27547, column 2, in the fourth full paragraph, line 8, delete "er" from "higher" to read, "is unacceptably high and".

On page 27552, in Table 4, under the column of "Population served", change the second line to read ">1,000"; change the third line to read "<1,000"; change the fourth line to read <1,000". In Table 4, under the column of "Effective date of requirement", change the last entry to "Within six months of State classification".

On page 27557, column 2, at the end of the second full paragraph, the last two lines are changed to read "approved by EPA in 40 CFR 141.21(f)(3) of the rule permit it".

On page 27560, column 3, in line 12 of the second full paragraph, change "§ 142.16(c)(12)" to § 142.16(c)(2)".

On page 27561, column 1, paragraph 3, line 9, "§ 141.21a(a)" is changed to "§ 141.21(a)".

II. Correction to the Regulation

All but the following change in the rule correct minor typographical errors.

Section 141.63(d) is revised to clarify that the list of the best technology, treatment techniques, or other means available for achieving compliance with the MCL for total coliforms is inclusive, i.e., a properly operated and maintained system needs to comply with all the provisions listed. This approach is consistent with that of the proposed total coliform rule (52 FR 42237, column 1, November 3, 1987), in which the list is inclusive, except for paragraph (5) which does not appear in the proposal. EPA is including paragraph (5), which refers to the State Wellhead Protection Program, in § 141.63(d) of the final rule, since it is merely a statement of what is already required by section 1428 of the Safe Drinking Water Act (SDWA). Section 141.63(d) is also clarified by pointing out that paragraph (5) refers only to those systems which use ground water, which is consistent with section 1428 of the SDWA.

Dated: June 13, 1990.

Robert H. Wayland, III,

Acting Assistant Administrator for Water.

The following technical amendments are made to 40 CFR parts 141 and 142.

PART 141—[AMENDED]

§ 141.21 [Amended]

1. In § 141.21(a)(2), "is based of the population" is changed to read "is based on the population."

§ 141.21 [Amended]

2. In § 141.21(a)(3)(i), second sentence, a comma is inserted after 1994 to read "29, 1994, the State."

§ 141.21 [Amended]

3. In § 141.21(a)(3)(vi), "§" is inserted before "141.2."

§ 141.21 [Amended]

4. In § 141.21(a)(4), change "system which uses ground water" to, "system which uses only ground water."

§ 141.21 [Amended]

5. § 141.21(c)(iii), second sentence, "paragraphs (b)(1) through (4)" is changed to, "paragraphs (b)(1)–(4)."

§ 141.21 [Amended]

6. In § 141.21(d)(i), commas are inserted following the years to read "June 29, 1994," and "June 29, 1999,".

§ 141.21 [Amended]

7. In § 141.21(e)(2), change "fecal coliform-positive of *E. coli-*", to "fecal coliform-positive or *E. coli-*".

§ 141.21 [Amended]

8. In § 141.21(f)(3)(iv), change "et al" to "*et al.*".

§ 141.21 [Amended]

9. In § 141.21(f)(4), change "908A—pp. 872)," to "908A—p. 872),".

§ 141.21 [Amended]

10. In § 141.21(f)(5), last sentence, change "Method 908C—pp. 879," to "Method 908C—p. 879,".

§ 141.32 [Amended]

11. In § 141.32(e)(11), first sentence, a period is inserted between "§ 141.63(b)]" and "The".

§ 141.32 [Amended]

12. In § 141.32(e)(12), first sentence, a period is inserted at the end of the line to read "and (b)].".

13. On page 27566, column 2, in paragraph 8 (near the bottom of the page), the symbol "§" is removed from the first line.

§ 141.52 [Amended]

14. In § 141.52, insert a period following "§ 141.52 Maximum contaminant level goals for microbiological contaminants."

15. On page 27566, column 3, in paragraph 9 (near the top of the page), add section before 141.63.

§ 141.63 [Amended]

16. In § 141.63(d)(4), change "ozone; or" to "ozone; and."

§ 141.63 [Amended]

17. Revise § 141.63(d)(5) to read: "For systems using ground water, compliance with the requirements of an EPA-approved State Wellhead Protection Program developed and implemented under Section 1428 of the SDWA."

§ 142.14 [Amended]

18. In § 142.14(a)(5)(ii)(A), insert a comma in "1000" to read "1,000."

§ 142.14 [Amended]

19. In § 142.14(a)(5)(ii)(G), change "fecal coliform of *E. coli* testing" to "fecal coliform or *E. coli* testing."

§ 142.15 [Amended]

20. In § 142.15(b)(5), change "§ 141.21a" to "§ 141.21(a)".

§ 142.16 [Amended]

21. In § 142.16(c), change the period to a colon, to read "information:".

§ 142.16 [Amended]

22. In § 142.16(c)(2)(i), capitalize "A", i.e., "persons—A description of how the State".

§ 142.16 [Amended]

23. In § 142.16(c)(2)(ii), insert a comma in "1000" to read, "1,000"; insert a dash between "fewer)" and "A" to read, "fewer)—A description"; add a parenthesis to "§ 141.21(a)3)(i)" to read "§ 141.21(a)(3)(i)".

§ 142.16 [Amended]

24. In § 142.16(c)(2)(iii), add a comma to "1000" to read, "1,000"; insert a dash between "persons)" and "A description" to read, "persons)—A description"; insert a comma in "1000" to read, "1,000" in two places.

§ 142.16 [Amended]

25. In § 142.16(c)(2)(iv), add a dash between "1 NTU)" and "A".

§ 142.16 [Amended]

26. In § 142.16(c)(2)(v), add a dash between "samples)" and "A".

§ 142.16 [Amended]

27. In § 142.16(c)(2)(vi), add a dash between "connection)" and "A".

§ 142.16 [Amended]

28. In § 142.16(c)(2)(vii), add a dash between "sample)" and "A".

§ 142.16 [Amended]

29. In § 142.16(c)(2)(viii), add a dash between "samples)" and "A".

§ 142.16 [Amended]

30. In § 142.16(c)(2)(ix), add a dash between "surveys)" and "A".

§ 142.16 [Amended]

31. In § 142.16(c)(2)(x), add a dash between "sample)" and "A".

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federal register

Tuesday
June 19, 1990

Part VII

Department of Transportation

Coast Guard

33 CFR Part 117

Temporary Drawbridge Operation, Mystic River CT; Proposed Temporary Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-90-072]

Temporary Drawbridge Operation Regulations; Mystic River, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Proposed temporary rule.

SUMMARY: At the request of Connecticut Department of Transportation (CONN DOT), the Coast Guard is considering temporary regulations for 60 days from 29 June through 28 August 1990 for the US Route 1 drawbridge over Mystic River, at mile 2.8, at Mystic, Connecticut which would eliminate the 12:15 p.m. opening for vessels while continuing the other hourly openings at quarter past the hour at other times from 7:15 a.m. to 7:15 p.m. This proposed temporary regulation is being considered to examine the effect on pedestrian, vehicular and marine traffic during the above period and would provide for openings in emergency situations. This action should accommodate the needs of vehicular and pedestrian traffic, while providing for the reasonable needs of navigation.

DATES: Comments must be received on or before 22 June 1990.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other material referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 9 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. A shortened comment period has been implemented in order to permit an opportunity to put the proposed temporary regulation in effect on 29 June 1990 for evaluation if considered appropriate. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John Gately, Project Attorney.

Discussion of Proposed Temporary Regulations

Current regulations provide that the draw shall open on signal, with a maximum delay of 20 minutes, except: (1) From May 1 through October 31 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour; (2) From November 1 through April 30 from 7:15 p.m. to 5:15 a.m., the draw shall open on signal upon eight hours notice. The proposed temporary regulation would eliminate the 12:15 p.m. opening while continuing the other hourly openings at quarter past the hour from 7:15 a.m. to 7:15 p.m. for 60 days from 29 June to 28 August 1990, inclusive. The proposed temporary regulations would be issued under 33 CFR 117.43 to evaluate the effect on pedestrian, vehicular and marine traffic around the noon hour during the summer months. Provisions for openings in emergencies are provided. Local business interests requested, through CONNDOT, to eliminate the 12:15 p.m. opening of the bridge because vehicular traffic backs up for long distances while the bridge is open, and large groups of pedestrians gather at either end of the bridge to wait for an opportunity to cross the Mystic River. In addition, many of the people who work in and around Mystic have a limited amount of time to conduct business, visit local restaurants, and run errands during the noon time. From May through October, the number of boats transiting the bridge each month varied from approximately 480 to 2630. The total number of boats using the waterway increased from 7353 in 1986 to 9091 in 1988. Approximately 5200 vessel transits were recorded between July and August 1988.

Economic Assessment and Certification

These proposed temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the proposal is for a limited period and will not prevent but would only require mariners to schedule their transits around the 12:15 p.m. opening during the peak summer months. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a signficant 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 proposed rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Temporary Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is proposed to be 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 117.211 (b)(1) is suspended and (b)(3) and (4) are added for a 60 day period from 29 June through 28 August 1990 to read as follows:

§ 117.211 Mystic River.

* * * * *

(b) * * *

(3) From 29 June through 28 August from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour. However, the draw need not open at 12:15 except as provided in (b)(4).

(4) Public vessels of the United States, state and local vessels used for public safety, and vessels in an emergency shall be passed immediately at anytime.

Dated: June 14, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 90-14339 Filed 6-18-90; 10:28 a.m.]

BILLING CODE 4910-14-M

federal register

Tuesday
June 19, 1990

Part VIII

The President

Proclamation 6148—National Scleroderma Awareness Week, 1990

Federal Register
Vol. 55, No. 118
Tuesday, June 19, 1990

Presidential Documents

Title 3—

The President

Proclamation 6148 of June 15, 1990

National Scleroderma Awareness Week, 1990

By the President of the United States of America

A Proclamation

Scleroderma is a painful and often progressive connective tissue disease that can result in serious debilitation and even death. This disease, whose name literally means "hard skin," is marked by the excess production of collagen, the main fibrous component of connective tissue. This overproduction of collagen causes the skin to harden and thicken and may adversely affect internal organs such as the heart, lungs, and kidneys as well. Victims who suffer from thickening of the esophagus may have difficulty swallowing solid food.

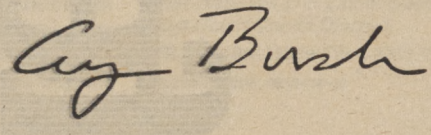
The course of the disease varies among individuals, and it may strike at any age. However, scleroderma usually affects people during their working years. Today thousands of Americans, most of them women, have scleroderma. Its impact in terms of physical and emotional suffering and financial loss is enormous.

Although the cause of scleroderma has not been identified, physicians and scientists have gained a greater understanding of the disease. Today there is reason to hope that improved methods of diagnosis and treatment will one day eliminate scleroderma as a cause of distress among individuals and their families. Determined to advance the fight against scleroderma, many governmental, scientific, and voluntary health organizations are working together to promote education and research in this field.

To increase public awareness of scleroderma and to recognize the importance of ongoing research into this disease, the Congress, by House Joint Resolution 516, has designated the week beginning June 10, 1990, as "National Scleroderma Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning June 10, 1990, as National Scleroderma Awareness Week. I urge all government agencies and the people of the United States, as well as educational, philanthropic, scientific, and health care organizations and professionals, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-14360
Filed 6-18-90; 11:14 am]
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Vol. 55, No. 118

Tuesday, June 19, 1990

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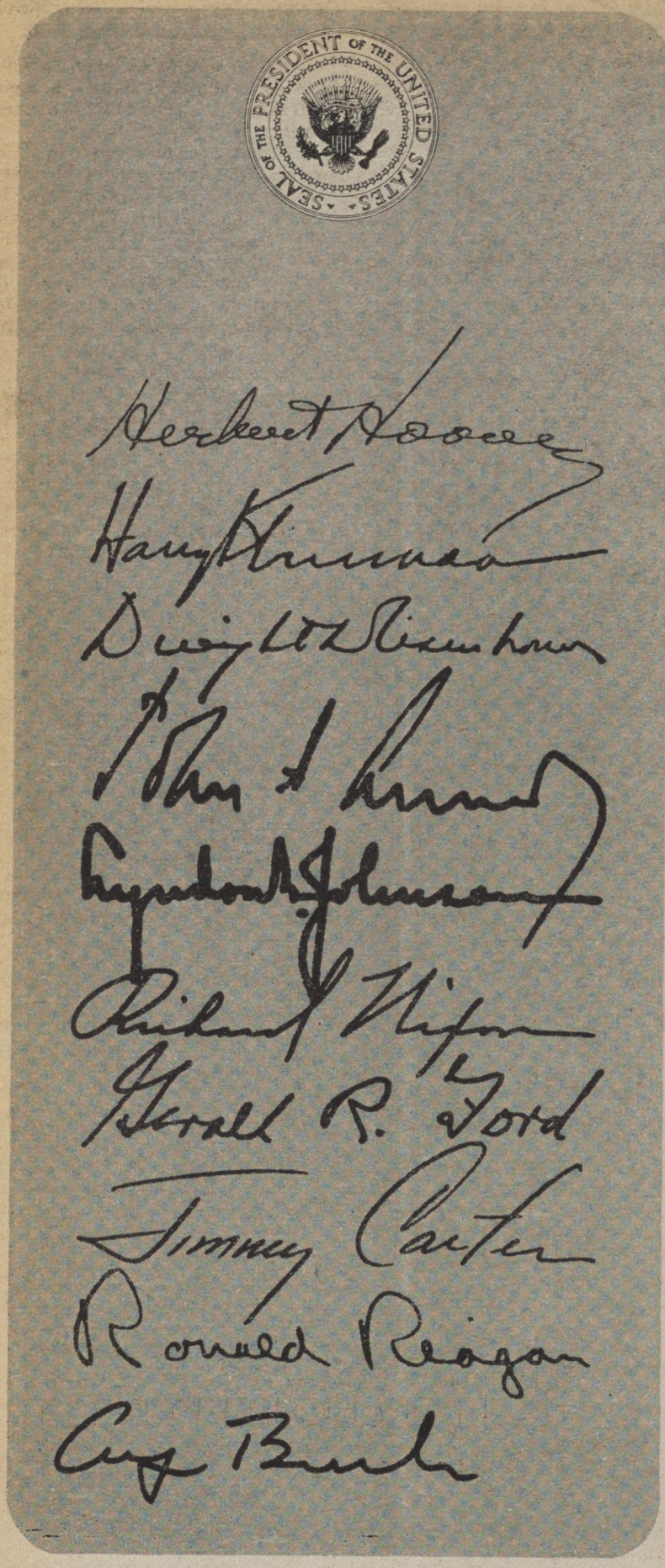
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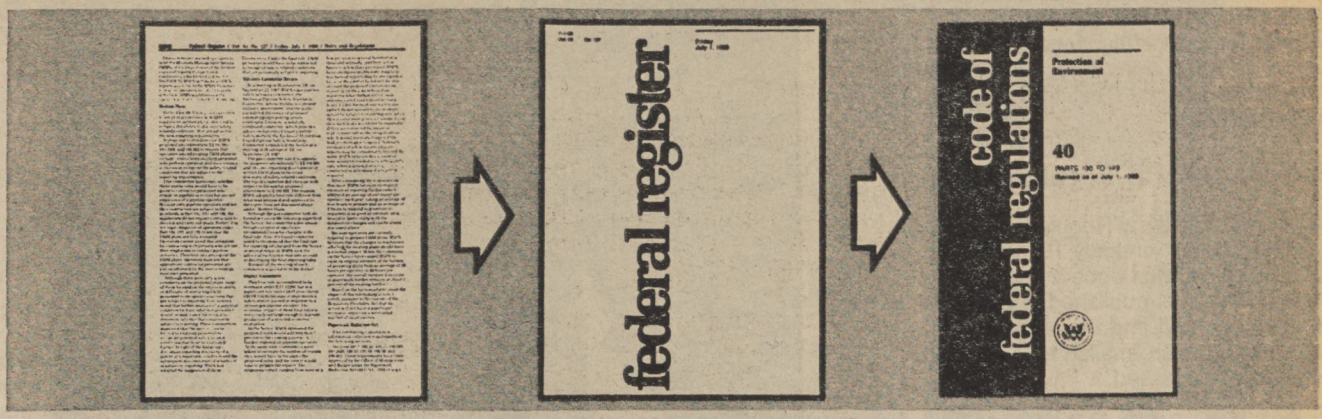
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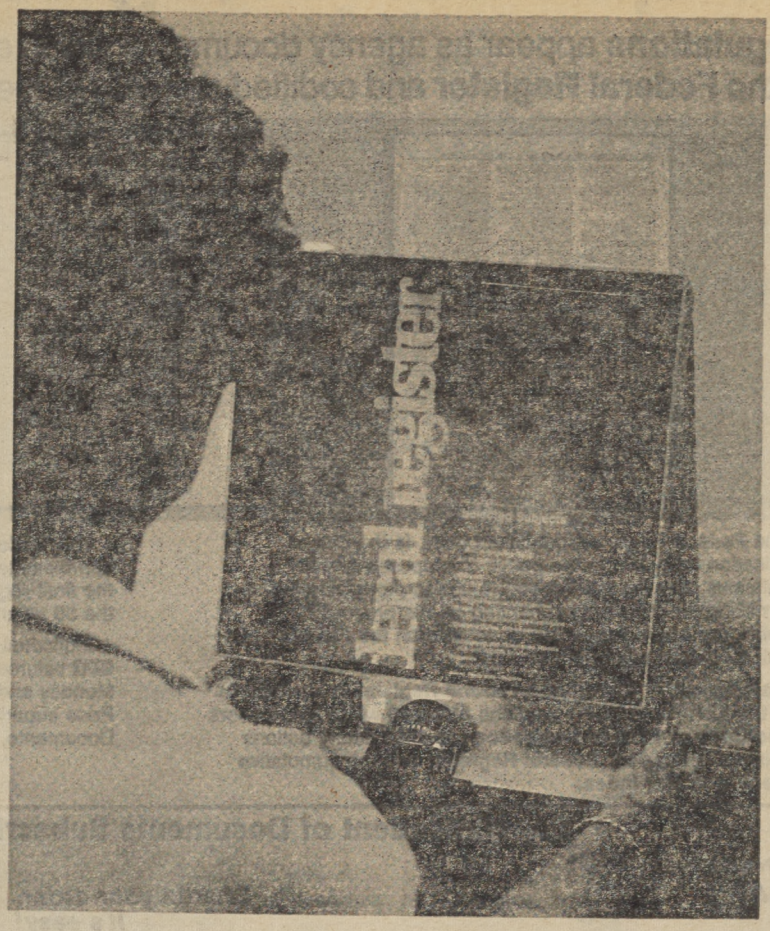
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