11-2-87
Vol. 52 No. 211
Pages 41943-42072

federal register

Monday
November 2, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

WASHINGTON, DC

WHEN: November 20, at 9 a.m.
WHERE: National Archives and Records Administration, Room 410, 8th and Pennsylvania Avenue NW., Washington, DC.
RESERVATIONS: Robert D. Fox, 202–523–5239.

Contents

Federal Register
Vol. 52, No. 211
Monday, November 2, 1987

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR
Proposed Rules:
Ch. III 41998

3 CFR
Proclamations:
5734 41943

7 CFR
354 41945
946 41946
1901 41947
1942 41947
1955 41956

9 CFR
312 41957
381 41957

12 CFR
35 41959
207 41962
220 41962
221 41962
224 41962
324 41966
325 41969

14 CFR
39 (2 documents) 41973, 41975
Proposed Rules:
39 (2 documents) 42001, 42002

17 CFR
3 41975
4 41975
140 41975

18 CFR
Proposed Rules:
37 42003

21 CFR
5 41986
175 41987
510 41987
558 41988
Proposed Rules:
101 42003

24 CFR
232 41988
235 41988
885 41989
Proposed Rules:
24 42004

31 CFR
358 41990

32 CFR
361 41993

33 CFR
165 41995

37 CFR
Proposed Rules:
1 42016

40 CFR
60 42061
271 41996
Proposed Rules:
52 42019

42 CFR
2 (2 documents) 41996, 42061

50 CFR
17 (2 documents) 42063, 42067

Federal Register
Vol. 52, No. 211
Monday, November 2, 1987

Presidential Documents

Title 3—

The President

Proclamation 5734 of October 29, 1987

National Hospice Month, 1987

By the President of the United States of America

A Proclamation

The hospice movement in America is an organized voluntary effort to enhance health care for dying people and their families. Hospices, expanding rapidly as a vital component of health care, provide a compassionate way for terminally ill patients to approach death naturally in a supportive environment and surrounded by family members. Hospices foster personal care, comfort, and full living, with attention to physical, emotional, and spiritual needs, especially those relating to pain and grief. The enactment in recent years of a permanent Medicare hospice benefit and an optional Medicaid benefit makes this care a possibility for more Americans.

The most important focus of hospice care is concern for patients and their families. This emphasis on the sanctity of human life and the dignity and worth of every individual is exactly why we set aside a time to salute the professional staffs of our Nation's approximately 1,700 hospices and the thousands of volunteers who give freely of themselves in this endeavor.

The Congress, by House Joint Resolution 234, has designated November 1987 as "National Hospice Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 1987 as National Hospice Month. I urge all government agencies, the health care community, appropriate private organizations, and the people of the United States to observe the month of November with appropriate programs and activities to recognize and support hospice care.

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

Ronald Reagan

[FR Doc. 87-25487
Filed 10-30-87; 10:36 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 52, No. 211
Monday, November 2, 1987

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 87-075]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding or removing commuted traveltime allowances between various locations in Louisiana, North Carolina, Oregon, Texas, and Washington. Commuted traveltime is the time necessary for a PPQ employee to travel from his or her headquarters to his or her place of duty and return. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Eggert, Director, National Administrative Planning Staff, PPQ, APHIS, USDA, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, Chapter III, and 9 CFR, Chapter I, Subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into or exportation from the United States. When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services, in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a PPQ employee to travel to and from his or her headquarters and the place where he or she performs the overtime duty.

We are amending § 354.2 by adding or removing commuted traveltime allowances between various locations in Louisiana, North Carolina, Oregon, Texas, and Washington. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public of the commuted traveltime allowances between various ports and PPQ headquarters in these states.

Executive Order 12291 and Regulatory Flexibility Act

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

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

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

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

Effective Date

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

Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12372

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

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

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

2. Section 354.2 is amended by removing or adding, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Remove: * * * * *			
North Carolina:			
Pope AFB	Fayetteville	1	
* * * * *			
Texas:			
Aransas Pass	Corpus Christi		2
Corpus Christi	Corpus Christi	1	
Corpus Christi, NAS.	Corpus Christi		1
Gregory	Corpus Christi		1
Harbor Island	Corpus Christi		2
Point Comfort	Corpus Christi		5
Rockport	Corpus Christi		2
* * * * *			
Add: * * * * *			
Louisiana:			
Port of Tallulah	Baton Rouge		6
Port of Tallulah	West Monroe		3
* * * * *			
North Carolina:			
* * * * *			
Fort Bragg	Fayetteville	2	
Pope AFB	Fayetteville	2	
* * * * *			
Oregon: * * * * *			
Astoria	Longview, WA		3
Portland	Longview, WA		3
* * * * *			
Texas: * * * * *			
Aransas Pass	Corpus Christi		2½
Corpus Christi	Corpus Christi	2	
Corpus Christi, NAS.	Corpus Christi		2
Gregory	Corpus Christi		2
Ingleside and Harbor Island (Port Aransas).	Corpus Christi		3
Point Comfort	Corpus Christi		6
Rockport	Corpus Christi		3
* * * * *			
Washington:			
Kalama	Longview		2
Longview	Longview	2	
Vancouver	Longview		3
* * * * *			

Done in Washington, DC, this 28th day of October, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-25328 Filed 10-30-87; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Relaxation of Inspection Requirements for Shipments of Potatoes to District 5 and Spokane County in District 1 in Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes inspection requirements for certain shipments of potatoes grown in Washington. Currently uninspected potatoes can be shipped for grading or storing purposes to Morrow or Umatilla Counties in Oregon throughout the year, and during the period July 15 to August 31 to District 5 in Washington. This rule will extend the period for such shipments to District 5 for the entire year and will also allow such shipments to Spokane County in District 1. The purpose of this action is to facilitate the movement of potatoes from growers to packing facilities and reduce inspection costs. This rule is based on a recommendation of the State of Washington Potato Committee. The committee works with the Department in administering the marketing order.

DATES: Interim final rule effective November 2, 1987. Comments which are received by December 2, 1987, will be considered prior to issuance of the final rule.

ADDRESS: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit & Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-447-5697.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946 (7 CFR Part 946), as amended, regulating the handling of Irish potatoes grown in Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), hereinafter referred to as the "Act".

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

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

There are approximately 60 handlers of Washington potatoes subject to regulation under the Washington potato marketing order and approximately 361 producers in Washington. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of the handlers and producers of Washington potatoes may be classified as small entities.

Section 946.54 of the order provides authority to modify, suspend, or terminate regulations in order to facilitate shipments of potatoes for grading or storing between the districts within the production area or to and within specified locations in the adjoining States of Idaho and Oregon. Section 946.55 authorizes regulations to prevent the transportation of such potatoes to points outside the production area. Currently, potatoes which are shipped for grading and storing purposes to District 5 for the period July 15 through August 31 each year and to Morrow and Umatilla Counties in Oregon throughout the year are exempted from inspection (§ 946.336 of the regulations). If they are subsequently reshipped for other than exempted purposes, the potatoes must be inspected and must meet the requirements of the regulations. This rule expands the inspection exemption by allowing uninspected potatoes to be shipped for grading or storing purposes to District 5 the entire year and by also allowing such shipments to Spokane County in District 1 the entire year.

Many growers outside of District 5 and Spokane County in District 1 prefer to deliver their potatoes to packing facilities in these areas because the facilities are closer to their farming operations. However, the current handling requirements in § 946.336 require such potatoes to be inspected and certified as meeting minimum grade, size, maturity, and pack requirements before they are moved within the production area. From the 1978-79 through the 1981-82 seasons (July 1-June 30), potatoes were allowed to be moved into District 5 and Spokane County in District 1 throughout the year for grading and storing without first having the potatoes inspected. Several years ago, when potatoes started to appear on the

fresh market without the required inspection, this procedure was discontinued in order to improve compliance and prevent the marketing problems associated with such uninspected shipments.

However, the need to facilitate the movement of potatoes from growers to packing facilities without added cost still persists. In addition, handlers in District 5 and Spokane County in District 1 are near urban areas with sizable wholesale/retail markets, and many handlers repack bulk potatoes into consumer size containers. The regulation requires potatoes which are regraded, resorted, or repacked, or in any other way further prepared for market to be reinspected. As a result, with the exception of those shipments which are currently exempted, potatoes shipped from other districts within the area of production have had to be inspected twice, first within the district grown, and second after repacking.

To make it more convenient for producers to deliver their potatoes, and reduce inspection costs, the committee recommended that shipments of uninspected potatoes into District 5 throughout the year, and into Spokane County in District 1 for grading and storing purposes should again be allowed. The committee plans to monitor these shipments more closely than it did previously to prevent shipments of uninspected potatoes into the fresh market.

The impact of this action is expected to be positive and to benefit the Washington potato industry as a whole. By not having to obtain inspection twice on potatoes shipped to certain areas for grading, storing, or repacking, handlers' inspection costs will be lessened.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the committee, and other available information, it is hereby found that this amendment will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes the inspection requirements on certain shipments of Washington potatoes and relieves restrictions on handlers; (2) handlers of Washington potatoes are aware of this action which was recommended by the committee at a public meeting, and they need no additional time to take advantage of the relaxed requirements; (3) the shipment of 1987–88 crop potatoes has already started, and it is desirable that handlers be able to take advantage of the relaxed requirements on as many shipments as possible; and (4) this interim final rule provides a 30-day comment period, and any comments received will be considered prior to the issuance of a final rule.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, 7 CFR Part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

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

2. Sections 946.336(d)(6) and 946.336(e)(2) are amended to read as follows:

§ 946.336 Handling regulation.

* * * * *

(d) *Special purpose shipments.*

* * * * *

(6) Grading or storing at any specific location in Morrow or Umatilla Counties in the State of Oregon, in District No. 5, or in Spokane County in District 1;

(e) *Safeguards.*

* * * * *

(2) Handlers desiring to ship potatoes for grading or storing to any specified location in Morrow or Umatilla Counties in the State of Oregon, to District No. 5, or to Spokane County in District No. 1 shall:

* * * * *

Dated: October 27, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–25279 Filed 10–30–87; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1901 and 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding loans and grants for Community Facility projects. This action is being taken by FmHA to comply with Public Law (Pub. L.) 99–198. Title XIII of Pub. L. 99–198 changes certain criteria for determining the amount of grant and interest rate a community can receive under FmHA's water and waste disposal program and establishes a new purpose for which grant funds may be used. Also, this action removes the limitation on the use of grant funds to pay a portion of project cost when the annual reserve exceeds one-tenth of the average debt service. Also, this action is being taken to comply with the Office of Management and Budget (OMB) Circulars A–128 and A–110. Other editorial changes are proposed to remove ambiguity in the existing regulations. The intended effect of this action is to bring existing regulations into compliance with Pub. L. 99–198, develop a new regulation for the technical assistance and/or training grants authorized by the law, and to more effectively serve the needs of rural communities.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or local Government agencies; or geographic regions. Futhermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay, to affect more than one agency or to be controversial. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provide better service to rural communities.

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

under No. 10.418, Water and Waste Disposal Systems for Rural Communities, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

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

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), Mr. Vance L. Clark, Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because, in terms of the total number of rural communities, less than 100 will be affected annually.

This action amends FmHA's policies for making development grants and loans. These loans and grants assist in financing the development costs of domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

These loans and grants will assist rural communities and other associations of farmers, ranchers, rural residents, and other rural users in developing projects and improving the management or operations of existing systems. This action also includes a new regulation and policies for making technical assistance and/or training grants to private nonprofit organizations.

Public Law 99–198 requires FmHA to: (1) Develop a graduated scale of grant rates that establishes a higher rate for projects in communities having lower population and income levels, (2) for water and waste disposal projects serving more than one separate community, use median population and income levels of all the separate communities in calculating grants and establishing interest rates, and (3) provide grants to private nonprofit organizations for the purpose of providing technical assistance and/or training to associations eligible for FmHA water and waste disposal grant funding.

This action removes a limitation on the use of grant funds when the annual reserve exceeds one-tenth of the annual debt service requirements. This reserve limitation affects projects involving other lenders.

The audit requirements of OMB Circulars A–128 and A–110 are being incorporated into FmHA's grant regulations by adding a new section.

FmHA amends Subparts A and H and adds a new Subpart J of Part 1942 to bring FmHA Community Facility regulations into compliance with Pub. L. 99–198.

On February 4, 1987, a proposed rule was published in the **Federal Register** (52 FR 3433) for a 30-day review and comment period. Six comments were received from the public review process.

1. *Sections 1942.17(f)(6) and 1942.363(d)*—Three comments were received regarding the income of a service area where more than one geographic area is being served by a water or waste project. The commenters stated that the use of a weighted median household income would be a disadvantage to some lower income areas served. After further review of the comments on this proposed change FmHA has determined that it should not be implemented. FmHA's current regulations provide enough flexibility to accomplish the intent of Pub. L. 99–198. The regulations now authorize the consideration of separate rural communities' median household income in determining interest rates and grant amounts for water and/or waste disposal projects when such communities are part of a larger project.

2. *Sections 1942.360(b) and 1942.363(c)(2)*—Two comments were received concerning the use of a percentage of median household income as one method of determining the amount of a grant. The commenters stated that this method should be removed from the regulations. FmHA has not adopted this suggested change. The regulations give priority for loan and/or grant funding to communities with low population and income. The grant regulations, as proposed, will allow communities with income below the poverty line or below 80 percent of the Statewide median household income to receive a larger grant.

3. *Section 1942.454(a)*—One commenter stated that small towns be specifically identified as an association. FmHA has made this change.

4. *Section 1942.458(c)*—Two comments were received regarding the use of Technical Assistance and/or Training Grants to assist associations that have filed a preapplication with FmHA in the preparation of water and/or waste disposal grant applications. The intent of this provision is not to recruit new applicants for the water and waste disposal program, but rather to assist those communities that have already decided to make an application for the FmHA water and waste disposal program. The filing of a preapplication is an indication that a community has decided to make an application for the FmHA water and waste disposal program. We have included loan applications in this section. One commenter suggested not including this as an eligible grant purpose; however, this purpose was included in the law. Therefore, FmHA has not adopted this suggestion.

5. *Section 1942.463(a)*—Two commenters suggested that a provision be included for accepting preapplications in fiscal year 1987. FmHA has not included a provision for accepting preapplications in fiscal year 1987. Due to the date the regulations will be effective there will be no need for this provision.

6. *Section 1942.464*—Three comments were received regarding the priorities to be used in selecting applicants for available funds. Two commenters stated that points should be assigned to each priority criterion. FmHA has not incorporated this change. Each preapplication may be based on providing different type services and, therefore, it would not be practical to include numerical points to establish priority for funding.

One commenter stated that the cost effective priority implied that it favors service to utility systems serving a large number of users. FmHA has deleted the reference to cost per person and inserted the cost per association served.

Another commenter stated that § 1942.464(c) be expanded to include direct staffing of activities that are delivered to the associations. FmHA has included this suggestion.

One commenter stated that the word "project" in § 1942.464(g) be defined. FmHA has defined the project as the technical assistance and/or training grant project not a construction project.

List of Subjects

7 CFR Part 1901

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

7 CFR Part 1942

Community development, Community facilities, Loan programs—housing and community development, Loan security, Rural areas, Waste treatment and

disposal—domestic, Water supply—domestic.

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

PART 1901—PROGRAM-RELATED INSTRUCTIONS

1. The authority citation for Part 1901 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 5 U.S.C. 301; 42 U.S.C. 2942; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Civil Rights Compliance Requirements *C*

2. In § 1901.204, paragraphs (a)(19), (a)(20) and (a)(21) are added; paragraphs (b)(2) and (d)(1) are revised; paragraph (d)(3)(iv) is added; and paragraphs (d)(5), (e)(2)(ii) and (f) are revised to read as follows:

§ 1901.204 Compliance reviews.

(a) * * *

(19) Technical Assistance and Training grants in accordance with Title XIII of Pub. L. 99–198.

(20) Industrial Development grants.

(21) Section 601 Energy Impacted Area Development Assistance grants.

(b) * * *

(2) Until the last advance of funds is made in the case of grants for Technical Assistance and Training (Pub. L. 99–198), or Technical Assistance for rural housing, or planning grants if no FmHA loan funds are involved; or

* * * * *

(d) * * *

(1) *Designation of Compliance Review Officer.* The State Director, except for Technical Assistance and Training grants (Pub. L. 99–198), will designate the Compliance Review Officer for recipient organization. County Supervisors may be designated only if they have received approved compliance review training. Otherwise, the Compliance Review Officer must be a member of the State staff. For Technical Assistance and Training grants the Assistant Administrator for Community and Business Programs will designate the Compliance Review Officer for recipient organizations.

* * * * *

(3) * * *

(iv) Technical Assistance and Training grants (Pub. L. 99–198). The Compliance Review Officer will record in the running record information obtained during the compliance review and the determination of recipient's compliance or noncompliance. A report will be prepared and sent to the Assistant Administrator, Community and Business Programs, for each recipient.

* * * * *

(5) *Forwarding noncompliance report.* The State Director will see that the reports are complete. If the recipient was found in noncompliance, the State Director will immediately send a copy of the report to the Administrator, Attention: Equal Opportunity Officer, with action proposed to bring the recipient into compliance. For Technical Assistance and Training grants, the Assistant Administrator, Community and Business Programs, will send a copy of the report to the Equal Opportunity Officer.

(e) * * *

(2) * * *

(ii) Technical assistance grant and Technical Assistance and Training grants (Pub. L. 99–198). The initial compliance review will be conducted before the grant is closed.

* * * * *

(f) *State Office summary reports.* The State Director will keep a list of all compliance reviews conducted during the reporting year so as to schedule each year's reviews. The State Director will submit a copy of this list to the Administrator, Attention: Equal Opportunity Officer, no later than July 31 of each year. Recipients found in noncompliance will also be listed on the summary report. Exhibit B is a sample report. For Technical Assistance and Training grants the Assistant Administrator, Community and Business Programs, will submit a summary report, using Exhibit B of this subpart as a guide, to the Equal Opportunity Officer by July 31 of each year.

PART 1942—ASSOCIATIONS

3. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 16 U.S.C. 1005; 7 CFR 2.70.

Subpart A—Community Facility Loans

4. In § 1942.17, paragraph (f)(6) is revised to read as follows:

§ 1942.17 Community Facilities.

* * * * *

(f) * * *

(6) *Income determination.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from the most recent decennial census of the U.S. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the FmHA National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

5. Section 1942.358 is amended by revising paragraph (e) to read as follows:

§ 1942.358 Use of grant funds.

* * * * *

(e) To use FmHA grant funds on projects where other types of financial assistance are available on all or part of the projects, provided the other assistance is on reasonable rates and terms. In such cases the maximum percentages allowed under other agencies' authorities will apply to their participation in the project. However, the FmHA grant may not exceed applicable percentages in § 1942.360(b) of this subpart of the eligible project development cost. The need for FmHA grant funds must meet the requirements of § 1942.363 of this subpart after considering all project financing.

* * * * *

6. Section 1942.360 is amended by removing paragraph (a)(11); redesignating paragraphs (a)(12), (a)(13), and (a)(14) as (a)(11), (a)(12), and (a)(13) respectively; and by revising newly redesignated paragraph (a)(13) and paragraph (b) to read as follows:

§ 1942.360 Grant limitations.

(a) * * *

(13) Pay any costs of a project when the median household income of the

service area is above the poverty line and more than 100 percent of the nonmetropolitan median household income of the State. The poverty line will be that income for a family of four as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(b) An FmHA development grant may not be made in excess of the following percentages (*whichever is higher*) of the eligible project development costs. Facilities previously installed will not be considered in determining the development costs.

(1) Seventy-five percent (75%) when the median household income of the service area is below the poverty line or below 80 percent (whichever is higher) of the Statewide nonmetropolitan median household income.

(2) Fifty-five percent (55%) when the median household income of the service area exceeds the seventy-five percent requirements described in paragraph (b)(1) of this section but is not more than 100 percent of the Statewide nonmetropolitan median household income.

7. In § 1942.363, paragraph (b)(3) is added, and paragraphs (c)(1), (c)(2) and (d) are revised to read as follows:

§ 1942.363 Determining the need for development grants.

* * * * *

(b) * * *

(3) *User rate.* The initial user rate after the grant is made should produce enough revenue to provide for all costs of the facility. The planned revenue should be sufficient to provide for all debt service, reserve, operation and maintenance and if appropriate, additional revenue for facility replacement of short lived assets without building a substantial surplus. Ordinarily, the total reserve will be equal to one average annual loan installment which will accumulate at the rate of one-tenth of the total each year.

(c) * * *

(1) Grants may not exceed the percentages in § 1942.360(b) of this subpart of the eligible project development costs listed in § 1942.358 of this subpart.

(2) Applicants will be considered for grant assistance when the debt service portion of the average annual user cost, for users in the applicant's service area, exceeds the following percentages of median household income:

(i) *.5 percent* when the median household income of the service area is below the poverty line or below 80 percent (whichever is higher) of the Statewide nonmetropolitan median household income.

(ii) *1.0 percent* when the median household income of the service area exceeds the .5 percent requirement but is not more than 100 percent of the Statewide nonmetropolitan median household income.

* * * * *

(d) The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area, communities described in paragraph (b)(2) of this section, communities used in Part II C of Form FmHA 1942–51, and the nonmetropolitan median household income for the State will be determined from income data from the most recent decennial census of the U.S. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented on Form FmHA 1942–51 and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the FmHA National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

* * * * *

8. Section 1942.381 is added to read as follows:

§ 1942.381 Audits.

Audits will be handled in accordance with § 1942.17(q)(4) of Subpart A of Part 1942 of this chapter.

9. New Subpart J is added to Part 1942 to read as follows:

PART 1942—ASSOCIATIONS

Subpart J—Technical Assistance and Training Grants

Sec.

Subpart J—Technical Assistance and Training Grants

§ 1942.451 General.

This subpart sets forth the policies and procedures for making technical assistance and training grants authorized under section 306 (a)(16)(A) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)), as amended.

§ 1942.452 [Reserved]

§ 1942.453 Objectives.

The objectives of the Technical Assistance and Training Grant Program are to:

(a) Identify and evaluate solutions to water and waste disposal problems in rural areas.

(b) Assist applicants in preparing applications for water and waste disposal grants made in accordance with Subpart H of Part 1942 of this chapter.

(c) Improve operation and maintenance of existing water and waste disposal facilities in rural areas.

§ 1942.454 Definitions.

(a) Association. An entity, including a small city or town, that is eligible for Farmers Home Administration (FmHA) water and waste disposal financial assistance in accordance with § 1942.17(b) of Subpart A and § 1942.355(a) of Subpart H of Part 1942 of this chapter.

(b) Grantee. An entity with whom FmHA has entered into a grant agreement under this program.

(c) Low Income. Median household income below the poverty line for a family of four as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or below 80 percent of the Statewide nonmetropolitan median household income.

(d) Rural area. For water and waste disposal facilities the terms "rural" or "rural area" will not include any area in a city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

(e) State. Any of the fifty States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

§ 1942.455 Source of funds.

All grants awarded will be made from not less than one (1) percent or, at the discretion of the FmHA Administrator, not more than two (2) percent of any appropriations for grants under section 306(a)(2) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)). Funds not obligated by September 1 of each fiscal year under this subpart will be used for water and waste disposal grants made in accordance with Subpart H of Part 1942 of this chapter.

§ 1942.456 [Reserved]

§ 1942.457 Eligibility.

Organizations eligible for grants are private nonprofit organizations that have been granted tax exempt status by the Internal Revenue Service of the United States. Applicants must have the proven ability, background, experience, legal authority and actual capacity to provide technical assistance and/or training to associations as provided in § 1942.453 of this subpart.

§ 1942.458 Purpose.

Technical Assistance and/or Training Grants may be used to:

(a) Identify and evaluate solutions to water problems of associations in rural areas relating to:

(1) Source.

(2) Storage.

(3) Treatment.

(4) Distribution.

(b) Identify and evaluate solutions to waste problems of associations in rural areas relating to:

(1) Collection.

(2) Treatment.

(3) Disposal.

(c) Assist associations that have filed a preapplication with FmHA in the preparation of water and/or waste disposal loan and/or grant applications.

(d) Provide training to association personnel that will improve the management, operation and maintenance of water and waste disposal facilities.

(e) To pay the expenses associated with providing the technical assistance and/or training authorized in paragraphs (a), (b), (c), and (d) of this section.

§ 1942.459 [Reserved]

§ 1942.460 Limitations.

Grant funds may not be used to:

(a) Recruit applications for FmHA's water and waste disposal loan and/or grant program or any loan and/or grant program.

(b) Duplicate current services, replacement or substitution of support previously provided such as those performed by an association's consultant in developing a project.

(c) Fund political activities.

(d) Pay for capital assets, the purchase of real estate or vehicles, improve and renovate office space, or repair and maintain privately-owned property.

(e) Pay for construction or operation and maintenance costs.

(f) Pay costs incurred prior to the effective date of grants made under this subpart.

§ 1942.461 Equal opportunity requirements.

The policies and regulations contained in Subpart E of Part 1901 of this chapter apply to grants made under this subpart.

§ 1942.462 Environmental requirements.

The policies and regulations contained in Subpart G of Part 1940 of this chapter apply to grants made for the purposes in § 1942.458 of this subpart.

§ 1942.463 Preapplications.

(a) Applicants will file an original and one copy of Form AD–621, "Preapplication for Federal Assistance," with the appropriate FmHA office between October 1 and December 31 each fiscal year. This form is available in all FmHA offices. Applicants proposing to provide technical assistance and/or training in only one State will apply through the appropriate FmHA State Office. The FmHA State Office will forward preapplications, with any written comments, within seven working days to the National Office, Attention: Water and Waste Disposal Division. Applicants providing technical assistance and/or training in more than one State will forward the preapplication to the Administrator, Farmers Home Administration, Washington, DC 20250.

(b) All preapplications shall be accompanied by:

(1) Evidence of applicant's legal existence and authority.

(2) Evidence tax exempt status from the Internal Revenue Service.

(3) Brief written narrative which includes items such as:

(i) The proposed service(s) to be provided, including the benefits of the technical assistance and/or training.

(ii) Area to be served.

(iii) Name of association(s) or type of association(s) that will be served.

(iv) Median household income of the population to be served by each association(s).

(v) Grantee's experience, including experience of key staff members and person(s) providing the technical assistance and/or training.

(vi) The number of months duration of the project or service and the estimated time it will take from grant approval to beginning of service.

(vii) Method used to select the association(s) that will receive the service.

(viii) Brief description of how the service will be provided. Such as through currently employed personnel or some other method.

(ix) Method to be used for delivery of the service, including personnel to be utilized and tasks to be contracted, if any.

(4) Latest financial information to show the organization's financial capacity to carry out the proposed work. As a minimum, the information should include a balance sheet and

(5) Estimated breakdown of costs including that to be funded by grantee as well as other sources.

(6) Budget and accounting system in place or proposed.

(7) Evaluation method to determine if objective(s) of the proposed activity is being accomplished.

(c) Upon receipt of a preapplication, the FmHA National Office will:

(1) Review and evaluate the preapplication and accompanying documents; and

(2) Request from the Office of General Counsel (OGC), a legal determination of applicant's legal existence and authority to provide technical assistance and/or training. The legal opinion will be obtained from the Regional Attorney serving the area where the applicant's headquarters is located; and

(3) Normally, respond to the applicant within 45 days after December 31 of each year using Form AD–622, "Notice

of Preapplication Review Action" indicating the action taken on the preapplication.

(d) Applicants whose preapplications are found to be ineligible will be given notice by use of Form AD–622 and advised of their appeal rights under Subpart B of Part 1900 of this chapter.

(e) Applicants who are eligible, but do not have the priority necessary for further consideration will be notified with Form FmHA AD–622 which includes the following statements:

"Your proposal cannot be funded within the available funds."

"You are advised against incurring obligations which cannot be fulfilled without FmHA funds."

(f) Applicants that are eligible for funding within the available funds will be provided forms and instructions for filing a complete application. Applicants should be advised against incurring obligations which cannot be fulfilled without FmHA funds.

§ 1942.464 Priority.

The preapplication and supporting information will be used to determine the applicant's priority for available funds. The following specific criteria will be considered in the competitive selection of grant recipients:

(a) Applicant's demonstrated capability and past performance in providing technical assistance and/or training to rural associations.

(b) The extent to which the population of the associations served have low income.

(c) Applicant's financial and if applicable, in-kind resources that will maximize use of technical assistance and/or training funds for direct staffing of activities that are delivered to the associations.

(d) The extent to which the project will be cost effective, including but not limited to; the ratio of proposed personnel to the cost of the project, the cost per associations served by the project, and the expected benefits from the project.

(e) How well the proposal coincides with the objectives of FmHA's Water and Waste Disposal program authorized in Subparts A and H of Part 1942 of this chapter.

(f) Applicants proposing to serve multi-state, regional, or nationwide areas.

(g) Applicants whose time frame for completion of the technical assistance and/or training grant project is twelve months or less.

§ 1942.465 [Reserved]

§ 1942.466 Application processing.

(a) Upon notification on Form AD–622 that the applicant is eligible for funding, the following will be submitted to the FmHA National Office by the applicant.

(1) Form AD–623, "Application for Federal Assistance (Nonconstruction Programs)."

(2) Proposed scope of work detailing the training and/or technical assistance to be accomplished and time frames for completion of each task.

(3) Proposed budget.

(4) Other requested information needed by FmHA to make a grant award determination.

(b) The following forms and documents will be part of the grant docket:

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

(2) Form FmHA 400–4, "Assurance Agreement."

(3) Grant Agreement signed by the applicant.

(4) Scope of work prepared by the applicant.

(5) Form FmHA 1940–1, "Request for Obligation of Funds."

(c) If the applicant fails to submit the application and related material by the date shown on Form AD–622 (normally 30 days from the date of Form AD–622), FmHA may discontinue consideration of the application.

§ 1942.467 [Reserved]

§ 1942.468 Grant approval and obligation of funds.

(a) FmHA National Office will review the application and other documents to determine whether the proposal complies with these regulations.

(b) All grants made under these regulations will be approved and obligated by the FmHA Administrator, or designee.

(c) The obligation of funds will be handled in accordance with § 1942.5(d) of Subpart A of Part 1942 of this chapter.

(d) An executed copy of the Grant Agreement and scope of work will be sent to the applicant on the obligation date, along with a copy of Form FmHA 1940–1. FmHA will retain the executed original of the Grant Agreement. The grant will be considered closed on the obligation date.

(e) If the grant is not approved, the applicant will be notified in writing of the reason(s) for rejection. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant under Subpart B of Part 1900 of this chapter.

§ 1942.469 Fidelity bond.

Prior to the advancing of funds, the grantee will provide fidelity bond coverage for the positions of persons entrusted with the receipt and disbursement of its funds and the custody of valuable property. The amount of the bond will be at least equal to the maximum amount of monies that the grantee will have on hand at any one time for technical assistance and/or training provided in accordance with the Grant Agreement. Unless prohibited by State law, the United States, acting through the Farmers Home Administration, will be named as co-obligee in the bond. The bond must be obtained from a company listed in Department of Treasury Circular 570, as amended. Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used. A certified power-of-attorney with effective date will be attached to the bond.

§§ 1942.470—1942.471 [Reserved]

§ 1942.472 Fund disbursement.

Grantees will be reimbursed as follows:

(a) Standard Form (SF) 270, "Request for Advance or Reimbursement?" will be completed by the applicant and submitted to FmHA National Office not more frequently than monthly.

(b) Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(c) Grantees are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, DC 20230.

§ 1942.473 Grant cancellation or major changes.

If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the Administrator will notify the Director of Legislative Affairs and Public Information Staff (LAPIS) giving the reasons for such action. In the case of a grant cancellation, Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," will not be submitted to the Finance Office until five working days after notifying the Director of LAPIS and grant obligation cancellations will not be submitted to

the National Office until 5 work days after notifying the Director of LAPIS.

§ 1942.474 Reporting.

Standard Form (SF) 269, "Financial Status Report," SF 272, "Federal Cash Transactions Report," and a project performance activity report will be required of all Grantees on a quarterly basis. A final project performance report will be required with the last SF-269. The final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. All multi-state, regional, and nationwide Grantees are to submit an original of each report to the FmHA National Office. Grantees serving only one State are to submit an original of each report to the FmHA State Director. The FmHA State Director will review and forward to the FmHA National Office the report with comments. The project performance reports shall include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives were not met;

(c) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(d) Objectives and timetable established for the next reporting period.

§ 1942.475 Audit.

The Grantee will provide an audit report prepared in accordance with OMB Circular A-110, Attachment F (available at any FmHA state or district office), within 90 days after project completion.

§ 1942.476 Grant agreement.

Exhibit A of this subpart is a Grant Agreement which sets forth the procedures for making and servicing grants made under this subpart.

§ 1942.477 Grant servicing.

Grants will be serviced in accordance with the grant agreement and Subpart E of Part 1951 of this chapter. Subpart B of Part 1900 of this chapter will be followed when grants are terminated for cause.

§ 1942.478 Delegation of authority.

The authority under this subpart is redelegated to the Assistant Administrator, Community and Business Programs, except for the discretionary authority contained in § 1942.455 of this subpart. The Assistant Administrator Community and Business Programs may redelegate the authority in this section.

§§ 1942.479—1942.499 [Reserved]

§ 1942.500 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0123.

Exhibit A—Grant Agreement Technical Assistance and Training

This agreement is between _____

_____

(name),

_____

(address), (Grantee) and the United States of America acting through the Farmers Home Administration (Grantor or FmHA). Grantee has determined to undertake certain Technical Assistance and/or Training at an estimated cost of $_____ and has duly authorized such activity. Grantee shall finance $_____ of the costs through cash and in-kind contributions. The Grantor agrees to grant to Grantee a sum not to exceed $_____ subject to the terms and conditions established by the Grantor; provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a)(16)(A) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) for the purpose of defraying technical assistance and/or training costs as permitted by applicable Farmers Home Administration regulations:

Part A

Grantor and Grantee agree

1. This agreement shall be effective when executed by both parties.

2. The scope of work described by the applicant in Exhibit 1 shall be completed within _____ days from the date of this agreement.

3. Use of grant funds for travel which is determined as being necessary to the program for which the grant is established may be subject to the travel policies of the Grantee institution if they are uniformly applied regardless of the source of funds in determining the amounts and types of reimbursable travel expenses of Grantee staff and consultants. Where the Grantee institution does not have such specific policies uniformly applied, the Federal Travel Regulations shall apply in determining the amount charged to the grant.

The information collected through the grant agreement is required to obtain a Technical Assistance and/or Training grant and is used to determine that the grant funds are used for authorized program purposes.

Grantee may purchase furniture and office equipment only if specifically approved in the scope of work. Approval will be given only when Grantee demonstrates that purchase is necessary. Commercial purchase under these circumstances will be approved only after consideration of Federal supply sources.

(a) Expenses and Purchases Excluded:

(i) In no event shall the Grantee expend or request reimbursement from Federal-share funds for obligations entered into or for costs incurred or accrued prior to the effective date of this grant.

(ii) Funds budgeted under this grant may not be used for entertainment expenses or to fund political activities.

(iii) Funds budgeted under this grant may not be used to pay for capital assets, the purchase of real estate or vehicles, improve or renovate office space, or repair and maintain privately-owned property.

(iv) Recruit applications for FmHA's water and waste disposal loan and/or grant program.

(v) Duplicate current services, replacement, or substitution of support previously provided.

(b) Grant funds shall not be used to replace any financial support previously provided for or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

4. Grant funds will be disbursed by FmHA on a reimbursement basis not to exceed one advance every 30 days. The financial management system of the recipient organization shall provide for effective control over and accountability for all funds, property and other assets.

(a) As needed, but not more frequently than once every 30 days, an original and one copy of Standard Form (SF) 270, "Request for Advance or Reimbursement" may be submitted to FmHA.

(b) Grantee shall provide satisfactory evidence to FmHA that all officers of Grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the Grantee.

(c) Where the Grantee shall have claimed credit for contributions-in-kind to the total cost of allowable expenses, the evaluation of such contributions-in-kind shall be subject to reevaluation by the Grantor at any time, and any deficiency so determined by the Grantor shall be compensated by supplemental contributions by the Grantee as a condition for further disbursements by the Grantor. Specific procedures for establishing the value of in-kind contributions from third parties established in OMB Circular A-110 will govern such an evaluation. Principles for determining cost are set forth in OMB Circular A-122 and will be used in cost evaluation.

(d) If for any reason grant funds are invested, income earned on such investments shall be identified as interest income on grant funds and forwarded to the Finance Office, FmHA, St. Louis, Missouri.

5. The Grantee will submit Performance and Financial reports as indicated below:

(a) Quarterly, an original and one copy of SF 269, "Financial Status Report," SF 272, "Federal Cash Transactions Report," (due 15 working days after end of quarter) and a Project Performance report according to the schedule below:

Period and Date Due

(b) Final, an original and 1 copy of SF 269, and a Project Performance report according to the schedule below:

Due Date

Note: Final reports may serve as the last quarterly reports.

(c) The original and 1 copy of reports and forms are to be submitted to the Administrator, Farmers Home Administration, Washington, DC 20250.

6. The budget covered by this agreement is:

(a) Federal Contribution

$ _____

Grantee Contribution

—Cash _____

—in-kind _____

Total $_____

(b) Budget.

Budget categories	Federal funds	Non-Federal share		Total
		Cash	In-kind	
Direct Charges:				
1. Personnel	$	$		$
2. Fringe benefits				
3. Travel				
4. Equipment				
5. Supplies				
6. Contractual				
7. Other				
Total direct charges	$			
Totals	$	$		$

(c) In accordance with OMB Circular A-122, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in order activities of the State or local government.

(d) In accordance with OMB Circular A-110, Attachment J, transfers among direct cost budget categories of more than 5 percent of the total budget must have prior written approval by the Administrator, Farmers Home Administration.

7. Grantee responsibility.

(a) The scope of work is described in the attached Exhibit 1. The Grantee accepts responsibility for providing technical assistance and/or establishing and implementing a training program as set forth in scope of work. The Grantee shall:

(i) Identify and evaluate solutions to water and waste disposal problems in rural areas.

(ii) Provide technical assistance and/or training to improve operation and maintenance of water and waste disposal facilities in rural areas.

(iii) Assist rural communities that have decided to submit an application for the FmHA Water and Waste Disposal grant program in preparing such application.

(iv) Provide continuing information to FmHA on the status of Grantee programs, projects, related activities, and problems.

(b) The Grantee shall inform the Grantor as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Grantor assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

Part B

Grantee Agrees

1. To comply with property management standards established by Attachment N of OMB Circular A-110 for expendable and nonexpendable personal property. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable property. When nonexpendable tangible property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall be vested in the Grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(ii) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the Grantee shall apply the standards of Part B 1. (b) and (c) of this exhibit.

(iii) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in Part B 1. (b) and (c) of this exhibit.

(iv) When title is transferred either to the Federal Government or to a third party and the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the Grantee has title.

(i) The Grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the Grantee shall use the property in connection with its other Federally sponsored activities, in the following order of priority:

(*1*) Activities sponsored by FmHA.

(*2*) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to projects or programs sponsored by FmHA; second, preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the Grantee no longer needs the property as provided in Part B 1. (b) of this exhibit, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amounts of compensation shall be computed by applying

the percentage of Federal participation in the cost of the original project or program to current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

(iii) FmHA shall determine whether the property can be used to meet the agency's requirements. If no need exists within FmHA, the General Services Administration's Federal Property Management Regulations (FPMR) will be used by FmHA to determine whether a need for the property exists in other Federal agencies. FmHA shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(*1*) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse FmHA an amount computed by applying to the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(*2*) If the Grantee is instructed to dispose of the property other than as described in Part B 1. (b) and (c) of this exhibit, the Grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(*3*) Property management standards for nonexpendable property. The Grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(*a*) Property records shall be maintained accurately and shall include:

(*i*) A description of the property.

(*ii*) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(*iii*) Sources of the property including grant or other agreement number.

(*iv*) Whether title vests in the Grantee or the Federal Government.

(*v*) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(*vi*) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(*vii*) Location, use and condition of the property and the date the information was reported.

(*viii*) Unit acquisition cost.

(*ix*) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Grantee compensates the Federal agency for its share.

(*b*) Property owned by the Federal Government must be marked to indicate Federal ownership.

(*c*) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(*d*) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss; damage, or the theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the Grantee shall promptly notify FmHA.

(*e*) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(*f*) Where the Grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(*g*) Expendable personal property shall vest in the Grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the Grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used soley for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

4. Provide an audit report prepared in accordance with OMB Circular A–110, Attachment F, within 90 days after project completion.

5. To account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes. See Part A4. (d) of this exhibit.

6. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in Part B1 of this exhibit.

7. To provide Grantor with such periodic reports as it may require of Grantee operations by designated representative of the Grantor.

8. To execute Form FmHA 400–1, "Equal Opportunity Agreement," Form FmHA 400–4, "Assurance Agreement," and to execute any other agreements required by Grantor to implement the civil rights requirements.

9. That, upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will to the extent legally permissible, repay to the Grantor forthwith the original principal amount of the grant stated herein above, with interest accruing thereon from the date of default at the market rate for water and waste disposal loan assistance in effect on the date hereof or at the time the default occurred. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by the Grantor, at its option and without regard to: (a) prior waivers by it of previous defaults of Grantee, (b) by judicial proceedings to require specific performance of the terms of this Grant Agreement, (c) by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and, (d) the laws and regulations under which this grant is made.

10. That no member of Congress shall be permitted any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the Grant a private nonprofit organization whose membership might include a member of Congress.

11. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

12. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

13. That the Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

14. That the Grantee shall abide by the policies promulgated in OMB Circular A–110, Attachment O, which provides standards for use by Grantees in establishing procedures

for the procurement of supplies, equipment, and other services with Federal grant funds.

15. To the following termination provisions:

(a) Termination for cause. The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, wherever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date. Grants can be terminated for cause such as: failure to use funds for authorized purposes, poor progress, untimely reports, no progress, and failure to properly account for expenditures or property.

(b) Termination for convenience. The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination. Disposition of expendable and nonexpendable personal property will be in accordance with the standards of Part B 1. of this exhibit.

16. As a condition of this grant or Cooperative Agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015.205 b, which hereby are incorporated in this Agreement by reference, and such statutory provisions as are specifically set forth herein.

Part C

Grantor Agrees

1. That it will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project.

2. That at its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority which it is made.

This agreement is subject to current Grantor regulations and any future regulations not inconsistent with the express terms hereof.

Grantee on _____ 19____, has caused this agreement to be executed by its duly authorized _____ and attested and its corporate seal affixed by its duly authorized _____.

Attest:
Grantee

By _____
(Title)

Grantor
United States of America
Farmers Home Administration
By _____

(Title)

Date: July 29, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-25234 Filed 10-30-87; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Part 1955

Property Management; Processing of Internal Agency Management Forms

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its property management regulations. This action is taken to prescribe a new internal agency management form regarding the disposition of acquired property. The intended effect of this action is to incorporate the new form into existing agency regulations so that our field offices will know when to process necessary paperwork.

EFFECTIVE DATE: November 2, 1987.

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

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures in Secretary's Memorandum 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only matters relating to internal agency management making publication for comment unnecessary and impractical.

Programs Affected

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

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

Intergovernmental Consultation

Catalog Nos. 10.405, 10.411, 10.414, 10.418, 10.419, 10.421, 10.422 and 10.423 are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Catalog Nos. 10.404, 10.406, 10.407, 10.410, 10.416, 10.417 are excluded from Executive Order 12372.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Policy Act of 1949, Pub. L. 91-90, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1955

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

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

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for Part 1955 continues to read as follows:

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

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

2. Section 1955.18(a) and the first sentence of paragraph (d) are revised to read as follows:

§ 1955.18 Actions required after acquisition of property.

(a) *Reporting acquisition.* When real or chattel property is acquired by the Government, the servicing official will prepare and distribute Form FmHA 1955–3, "Advice of Property Acquired," and Form FmHA 1955–3A, "Acquired Property-Maintenance," or Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired," according to the respective FMI immediately after a voluntary conveyance is closed, a foreclosure sale is completed, or property is acquired by any other means. The date of acquisition will be the date the deed to the Government is recorded for voluntary conveyance; the date of the foreclosure sale; or for chattels, the date the bill of sale (and title, if applicable) is executed transferring ownership to FmHA. Form FmHA 1955–3 and Form FmHA 1955–3A or Form 1965–19 will be submitted promptly without waiting for the final report on sale from OGC where required. A property identification number will be assigned in accordance with the respective FMI. For MFH loans, the State Director will forward a copy of Form FmHA 1965–19 to the National Office for monitoring purposes. For MFH projects with rental assistance, Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," must be attached to Form 1965–19 indicating the status of the rental assistance while the property is in inventory. The County Supervisor will report the acquisition of farm property to the local Agricultural Stabilization and Conservation Service (ASCS) by memorandum so that any allotments, marketing quotas or acreage bases established for the property will not lapse, terminate, be reduced or otherwise be adversely affected while the property is in inventory. The State Director will report any adverse affects on allotments, marketing quotas or acreage bases on any farm inventory property to the Administrator.

* * * * *

(d) * * * The Finance Office will establish an inventory account under the Property Identification Number assigned. * * *

* * * * *

Subpart B—Management of Property

3. In § 1955.63(a), the following sentence is added after the second sentence:

§ 1955.63 Suitability determination.

* * * * *

(a) * * * Form FmHA 1955–3A must be processed to update a change in the property suitability classification. * * *

* * * * *

4. In § 1955.63(c), the following sentence is added after the sixth sentence:

§ 1955.63 Suitability determination.

* * * * *

(c) * * * Form FmHA 1955–3A must be processed to update a change in the property suitability classification. * * *

* * * * *

Subpart C—Disposal of Inventory Property

5. In § 1955.114, the first two sentences of the introductory paragraph are revised to read as follows:

§ 1955.114 Sales steps for suitable property (housing).

After repairs, if any, are completed, suitable property will be offered for sale as outlined in this section and Form FmHA 1955–3A processed to incorporate the date the property is listed for sale. The appraisal should be updated and Form FmHA 1955–3A must be processed to update the appraisal date and market value to reflect repairs and improvements, if any, and Form FmHA 1955–40, for SFH property, or other appropriate notice for MFH property, will be prepared. * * *

* * * * *

6. In § 1955.115, the following sentence is added to the end of the introductory text:

§ 1955.115 Sales steps for unsuitable property (housing).

* * * Process Form FmHA 1955–3A to incorporate the date the property is listed for sale and/or update the appraisal date and market value.

* * * * *

Dated: October 20, 1987.

Eric P. Thor,

Acting Administrator, Farmers Home Administration.

[FR Doc. 87–25277 Filed 10–30–87; 8:45 am]

BILLING CODE 3410–07–M

Food Safety and Inspection Service

9 CFR Parts 312 and 381

[Docket Number 85–024F]

Official Marks for Sealing Samples

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal meat and poultry products inspection regulations to incorporate an official mark for use in sealing containers of samples of meat or poultry products or production-related articles collected by Agency officials for examination and/or testing at establishments or laboratories. Any seal approved by the Administrator for applying such mark shall be an official device. The seal helps assure that the identity and integrity of such samples will be maintained until completion of testing. The device shall be supplied by the United States Department of Agriculture.

EFFECTIVE DATE: December 2, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Horne, Associate Deputy Administrator, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–5190.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." The rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises or export markets. The final rule will not impact upon any segment of the industry.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule imposes no requirements on industry, and incorporates an official mark for sealing samples collected by FSIS inspectors,

compliance officers, or other designated Agency officials for examination and/or testing at establishments or laboratories.

Background

To assure compliance with Agency regulations promulgated under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), FSIS inspectors, compliance officers, or other designated Agency officials are required to periodically collect samples of meat or poultry products (e.g., specimens or frankfurter samples) for inplant examination and testing and/or submission for laboratory testing. Samples of production-related articles, such as water, spices, and chemicals, are also collected.

Samples of products, water, dyes, chemicals, preservatives, spices, or other articles in an official establishment are taken as often as necessary for the efficient conduct of inspection (9 CFR 318.9 and 381.146). Furthermore, samples may be collected from any person, firm, or corporation that engages, for commerce, in the business of: (1) Slaughtering cattle, sheep, goats, horses, mules, or other equines or preparing, freezing, packaging, or labeling any carcasses or parts or products thereof; (2) buying, selling, or transporting in commerce, or storing in or for commerce, or importing such carcasses or parts or products thereof; and (3) buying, selling, or transporting, or importing any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules or other equines, or poultry or parts or products of the carcasses of any such animals that died otherwise than by slaughter (9 CFR 320.4). A similar provision exists in the poultry products inspection regulations (9 CFR 381.178). Normally, FSIS inspectors collect samples at official establishments and FSIS compliance officers collect samples at locations other than official establishments.

Examination and testing of meat and poultry samples are conducted to determine, for example, the protein, moisture, fat, and salt content, or levels of drug or chemical residues and added substances. If a non-compliant meat or poultry product is found at an establishment or other location, FSIS takes appropriate action against the product and/or person, firm, or corporation involved. This action may range from requiring that the product be detained and seized or retained, condemned or reprocessed to filing a criminal charge or a civil complaint in Federal court. Likewise, if any production-related article does not comply with existing standards and/or regulations, FSIS action is necessary to resolve the problem. In light of this, samples must be handled with great care to maintain their identity and integrity.

Proposed Rule

The use of sample seals helps to prevent tampering pending completion of examination and testing, and on December 19, 1986, the Administrator proposed to require that sample seals be used by FSIS inspectors and compliance officers (51 FR 45477). It was proposed that the official mark on sample seals would consist of the words "Sample Seal" accompanied by the official USDA logo. Any seal approved by the Administrator for applying such mark would be considered an official device, the unauthorized handling of which is prohibited under section 11 of the FMIA (21 U.S.C. 611) and section 9 of the Poultry Products Inspection Act (21 U.S.C. 458). Such a device would be supplied by the United States Department of Agriculture.

FSIS did not receive any comments in response to the proposed rule. Therefore, FSIS is adopting the proposed rule as published.

List of Subjects

9 CFR Part 312

Meat inspection, Official inspection marks, Devices.

9 CFR Part 381

Official inspection marks, Devices, Poultry products inspection.

Final Rule

For reasons set forth in the preamble, 9 CFR Parts 312 and 381 are amended as set forth below.

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

1. The authority citation for Part 312 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Part 312 is amended by adding a new § 312.10 to read as follows:

§ 312.10 Official mark for maintaining the identity and integrity of samples.

The official mark for use in sealing containers of samples submitted under any requirements in this subchapter and section 202 of the Federal Meat Inspection Act shall bear the designation "Sample Seal" accompanied by the official USDA logo as shown below. Any seal approved by the Administrator for applying such mark shall be deemed an official device for purposes of the Act. Such device shall be supplied to inspectors, compliance officers, and other designated Agency officials by the United States Department of Agriculture.

SAMPLE SEAL

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

4. Part 381 is amended by adding a new § 381.112 to Subpart M to read as follows:

§ 381.112 Official mark for maintaining the identity and integrity of samples.

The official mark for use in sealing containers of samples submitted under any requirements in this Part and section 11(b) of the Poultry Products Inspection Act shall bear the designation "Sample Seal" accompanied by the official USDA logo as shown below. Any seal approved by the Administrator for applying such mark shall be deemed an official device for purposes of the Act. Such device shall be supplied to inspectors, compliance officers, and other designated Agency

officials by the United States Department of Agriculture.

SAMPLE  SEAL

Done at Washington, DC, on October 2, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-24960 Filed 10-30-87; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 35

[Docket No. 87-11]

Agricultural Loan Loss Amortization

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Temporary rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is issuing this temporary rule to implement Title VIII of the Competitive Equality Banking Act of 1987 which permits agricultural banks to amortize losses on qualified agricultural loans. The regulation describes the procedures and standards applicable to banks desiring to amortize losses under that statute. It also describes the manner in which such amortizations are to be done. Although the temporary rule is effective November 9, 1987, the Office is requesting comments from the public prior to adopting a final regulation.

DATES: The temporary regulation is effective November 9, 1987. Comments must be received on or before January 4, 1988.

ADDRESSES: Comments should be sent to Docket No. 87-11, Communications Division, 5th Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219. Attention: Lynnette Carter. Comments will be available for inspection and photocopying at the same address.

Pursuant to the Paperwork Reduction Act of 1980, the collection of information requirements in the regulation has been submitted to the Office of Management and Budget ("OMB"). Comments specifically addressing those requirements should be directed to the Comptroller's Office at the above address and should also be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for Comptroller of the Currency.

FOR FURTHER INFORMATION CONTACT: James F.E. Gillespie, Jr., Senior Attorney, Legal Advisory Services Division, (202) 447-1880; Jon A. Nagy, National Bank Examiner, Commercial Activities Division, (202) 447-1164; or Lance Cantor, Analyst, Special Supervision (202) 447-1719.

SUPPLEMENTARY INFORMATION: Title VIII of the Competitive Equality Banking Act of 1987 (the "Statute") permits agricultural banks to amortize (1) losses on qualified agricultural loans and (2) losses suffered as the result of an appraisal of other related assets, incurred between December 31, 1983, and January 1, 1992. The Statute also requires that the federal banking agencies issue implementing regulations no later than 90 days after its enactment, *i.e.*, by November 9, 1987. The regulation is intended to comply with this Statute. The other federal banking agencies (the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation) are adopting substantially identical regulations, containing only technical variations necessary to accommodate their slightly different situations.

Definitions

The regulation adopts a definition of "agricultural bank" that is essentially the same as the language of the Statute. Included in the Statute's definition of an agricultural bank is a bank which does not meet the agricultural loan volume test (agricultural loans are 25% or more of total loans) but has been recommended to the Federal Deposit Insurance Corporation for eligibility by the bank's federal or state regulator. Losses to be deferred may be included in determining whether a bank meets the agricultural loan volume test. Because of the regulation's flexibility in defining agricultural loans (see discussion below), it is anticipated that such recommendations rarely will be necessary.

The definition of "qualified agricultural loans" incorporates the definitions of "loans to finance agricultural production and other loans to farmers" and "loans secured by farm land" contained in Schedule RC-C of the Federal Financial Institutions Examination Council ("FFIEC") Consolidated Reports of Condition and Income ("call reports"). The call reports definitions are virtually identical to those contained in the Statute, but provide the additional benefits of being more comprehensive and of permitting the agencies to use the call report as the predominant monitoring device for the amortization program. Additionally, as suggested by the Statute, the Office has retained discretion to deem other types of loans and leases to be "qualified" if the requesting bank demonstrates those loans or leases to be sufficiently related to agriculture.

While the Statute uses the phrase "area * * * dependent on agriculture," the Office has not attempted to describe an agricultural area. Adopting a list of acceptable counties or geographic regions might leave the erroneous impression that a bank located outside such an arbitrary area could not qualify even though it might otherwise qualify as an "agricultural bank." Further, the definition of "agricultural bank" itself limits eligible banks to a size ($100,000,000 in assets) that would normally exclude banks not dealing substantially in agricultural credit. Thus, each application should include a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that it is located in an agricultural area.

Loss Amortization

The purpose of the Statute is best accomplished by permitting eligible banks to amortize losses on qualified agricultural loans and other related assets by reporting the amount of such deferred losses in new items in the asset and equity capital sections of the balance sheet of their Reports of Condition. This approach will provide for the disclosure of deferred losses, will not distort reported income and will facilitate monitoring of the bank's compliance with the loss deferral program through regular, quarterly call reports. Moreover, the full unamortized balance of the deferred losses will be included in primary capital for all regulatory and supervisory purposes by the three Federal banking agencies.

The section on loss amortization and reappraisal addresses two issues: (1) Which losses are subject to amortization, and (2) how they may be amortized. On the first issue, the regulation reflects Congress' clear intent that losses resulting from fraud or

criminal abuse on the part of the bank, its officers, directors, or principal shareholders not be eligible for amortization. Accordingly, where a bank has been found eligible to participate in the loss amortization program, even though an insignificant amount of its losses on agricultural loans arose from insider fraud or criminal abuse, those fraudulent losses will not be eligible for amortization. Additionally, it should be noted that the Statute requires there be "no evidence of" fraud or criminal abuse. Accordingly, under the temporary rule, it is not necessary that the existence or absence of such fraud or criminal abuse be conclusively established to disqualify a loan or, as discussed below, a bank.

To be eligible for amortization under the regulation, a loss on a qualified agricultural loan must have been reflected in the bank's financial statements for the years 1984 through 1991. Similarly, charge-offs that result from an appraisal or sale of real or personal property acquired in connection with a qualified agricultural loan may be amortized if the property is owned by the bank on the effective date of the regulation or is acquired before January 1, 1992.

With respect to the manner of amortization, the Statute provides that the loss shall be amortized over a period not to exceed seven years as provided in regulations issued by the federal banking agencies. The regulation provides that amortization shall occur on a quarterly straight-line basis.

The regulation permits qualified losses to be amortized over a period not to exceed seven years beginning in the quarter following the date of loss. Losses sustained in years prior to the effective date of the regulation will be treated as if amortized over seven years beginning in the quarter following the date of loss. Thus, a bank could take only the amortizations that remain for such a loss after it enters the program. For example, if a bank began to participate in the program in the last quarter of 1987 and had a loss sustained in the fourth quarter of 1985, that loss would be amortized over a seven-year period beginning in 1986. Therefore, 5/7ths of the 1985 loss would remain to be amortized as of December 31, 1987.

Accounting for Amortization

The regulation directs that in accounting for loss amortization, a bank should restate its capital and other relevant accounts in accordance with the FFIEC instructions for the call reports. Those instructions will continue to require the reporting of actual loan losses and recoveries through the Allowance for Loan and Lease Losses, but will then permit losses eligible for deferral to be reinstated in new items in the asset and equity sections of the balance sheet on the Report of Condition. Additionally, the regulation provides that any resulting increase in the capital account shall be treated as primary capital for purposes of determining the bank's solvency and its compliance with various federal statutes and regulations such as 12 U.S.C. 84, 371c, 375b and 12 CFR Parts 3 and 32, among others.

Eligibility

Under the regulation, any bank desiring to participate in the program will be required to submit to the Office a proposal establishing both its eligibility and the eligibility of the losses it proposes to amortize. In order to be eligible, the proposing bank must be an "agricultural bank" as defined in the regulation.

Further, the proposing bank's current capital must be in need of restoration, but the bank must also be an economically viable, fundamentally sound institution. Therefore, a bank with capital below levels established by 12 CFR Part 3 or that is subject to an enforcement action related to capital levels can be eligible. The Office's acceptance of a bank for loss amortization with an adequate capital plan will normally relieve the bank of any inconsistent provisions dealing with capital in any extant agency order, agreement, or directive.

The legislative history of the Statute indicates that Congress intended only banks with capital in need of restoration to be permitted to amortize losses. Banks that have experienced capital declines, but that retain an acceptable amount of capital have no need to amortize or defer their recognition of losses. Congress clearly was aware of this fact in that it required as an essential condition of eligibility the submission of a plan to restore capital to a level acceptable to the Office.

In order to be approved, the capital plan must be based upon realistic projections as to earnings and other material factors that accurately reflect conditions in the bank's market area. Further, it should address dividend levels, compensation to directors, executive officers and individua1s who have a controlling interest and their related interests, and payments for services or products furnished by affiliated companies.

Viability is not defined in the regulation. It is a judgment based on many variables. One measure of viability would be whether a bank has traditional funding and earnings sources of acceptable quality within its market area sufficient to permit the bank to earn a reasonable profit in a normal market environment while achieving and maintaining a capital level that provides the capacity to operate throughout the normal downturns in economic cycles without suffering severe financial problems. Usually, a bank will be considered viable if it has a reasonable prospect of remaining a going concern throughout the program and at the end of the amortization period.

Congress intended that only banks with reasonable prospects for survival should be permitted to amortize losses: the legislative history indicates that the Statute was intended to permit "fundamentally sound banks to weather this storm ." Cong. Rec. (Daily ed.) S3941 (March 26, 1987). To permit non-viable institutions to amortize losses would merely increase the loss exposure of the Federal Deposit Insurance Corporation with no countervailing public benefit.

The regulation does not prescribe any absolute level of capital to be achieved. 12 CFR Part 3 already establishes minimum capital standards for well run banks in satisfactory financial condition. Each bank's individual circumstances will be evaluated during the review of the requisite capital plan. This approach parallels the current practices under the agencies' existing capital forbearance programs.

An additional criterion for eligibility is that there be no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans. Literally read, the Statute would seem to disqualify any bank in which there was evidence that losses resulted from fraud or criminal abuse, no matter how small in amount the losses were. Certainly, where insider fraud results in significant agricultural loan losses, the bank should be disqualified. Congress intended the Statute to "provide assistance for agricultural banks, who through no fault of their own, are being squeezed by the ongoing agricultural crisis * * *" *Id.* However, a reasonable interpretation of the Statute, adopted in the regulation, would disqualify only banks where significant fraud losses occurred.

Conditions on Acceptances

The regulation specifies that any acceptance of a proposal will be subject to certain conditions. These conditions are designed to ensure that a bank continues to meet the eligibility requirements and is properly amortizing

losses under the program. First, the bank must fully adhere to the approved capital plan or obtain the prior approval of any modifications to the plan. Second, the bank must maintain accounting records adequate to document the amount and timing of deferrals, recoveries and amortizations for each loss subject to deferral under the program. Third, the bank must remain a viable, fundamentally sound institution. Fourth, the bank must agree to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans not lower than the percentage of such loans in its loan portfolio on January 1, 1986. Fifth, a participating bank must provide the Office, upon request, any information necessary to monitor the bank's amortization or its compliance with conditions, or its continued eligibility under the program. The failure of a bank to comply with any condition is grounds for revocation of an acceptance and termination of eligibility to participate in the loss deferral program. Finally, a violation of a condition may result in an administrative action against the bank under 12 U.S.C. 1818(b) because such conditions are imposed in connection with the granting of a request.

Submission of Proposals

Finally, the regulation lists the content of proposals to be submitted by banks desiring to participate in loss amortization. In addition to the items previously discussed, the proposal shall include a copy of a resolution by the bank's Board of Directors authorizing submission of the Proposal.

This is to ensure that the Board of Directors has been fully informed.

Reason for Adoption Without Prior Notice and Comment

Immediate adoption of this rule is required to comply with the statutory mandate that the Federal banking agencies issue regulations implementing the Statute within 90 days of its enactment. Additionally, the loss amortization program confers benefits upon eligible banks. For these reasons, the Office finds that application of the notice and comment procedure of 5 U.S.C. 553 to this action would be contrary to the Public interest and that good cause exists for making this action effective immediately. Nevertheless, the Office believes that comment on alternative proposals may be beneficial and could result in a better final regulation. Therefore, the Office also requests post-promulgation comment on preferable alternatives for implementing the Statute.

Regulatory Impact Analysis

Pursuant to section 3(g)(1) of Executive Order 12291 of February 17, 1981, it has been determined that the regulation does not constitute a "major rule" within the meaning of the executive order. Consequently, no regulatory impact analysis is necessary.

Regulatory Flexibility Act Analysis

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

Paperwork Reduction Act

The collection of information requirements contained in this temporary rule have been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No.1557-0186.)

List of Subjects in 12 CFR Part 35

National banks, Banking, Loans, Agriculture, Loss, Amortization.

For the reasons set forth in the preamble, Part 35 of Chapter I, Title 12 of the Code of Federal Regulations is added as follows:

PART 35—AGRICULTURAL LOAN LOSS AMORTIZATIONS

Sec.

Authority: 12 U.S.C. 1823(j) and 12 U.S.C. 93a.

§ 35.1 Authority and OMB control number.

(a) *Authority.* This part is issued by the Office of the Comptroller of the Currency ("Office") pursuant to 12 U.S.C. 1823(j) and 12 U.S.C. 93a.

(b) *OMB control number.* The collection of information requirements contained in this regulation were approved by the Office of Management and Budget under control number 1557-0186.

§ 35.2 Definitions.

For purposes of this part:

(a) "Agricultural Bank" means a bank—

(1) The deposits of which are insured by the Federal Deposit Insurance Corporation;

(2) Which is located in an area of the country the economy of which is dependent on agriculture;

(3) Which has total assets of $100,000,000 or less as of the most recent Report of Condition; and

(4) Which has—

(i) At least 25 percent of its total loans in qualified agricultural loans; or

(ii) Less than 25 percent of its total loans in qualified agricultural loans, but which bank the Office has recommended to the Federal Deposit Insurance Corporation for eligibility under this part.

(b) "Qualified Agricultural Loans" means—

(1) Loans qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purposes of Schedule RC-C of the FFIEC Consolidated Reports of Condition and Income or such other comparable schedule that may be in effect;

(2) Other loans or leases that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Office; and

(3) The remaining unpaid balance of any loans, as described in paragraphs (b) (1) and (2) of this section, that have been charged off since January 1, 1984, and that qualify for deferral under this regulation.

(c) "Accepting Official" means the head of the appropriate supervisory office designated by the Office for the applicant bank.

§ 35.3 Loss amortization and reappraisal.

(a) Provided that there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, its officers, directors, or principal shareholders, a bank that has been accepted under this part may, in the manner described below, amortize on its Reports of Condition and Income:

(1) Any loss on any qualified agricultural loan reflected in a bank's annual financial statements for any year between and including 1984 and 1991; and

(2) Any loss reflected in a bank's financial statements resulting from a reappraisal or sale of currently owned property, real or personal, that it acquired in connection with a qualified agricultural loan and any such additional property that it acquires prior to January 1, 1992.

(b) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly

straight-line basis commencing in the first quarter after the loss was or is charged-off so as to be fully amortized not later than December 31, 1998.

§ 35.4 Accounting for amortization.

Any bank which is permitted to amortize losses in accordance with § 35.3, above, may restate its capital and other relevant accounts and account for future authorized deferrals and amortizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in primary capital under § 3.100 of this chapter.

§ 35.5 Eligibility.

A proposal submitted in accord with § 35.7 of this part shall be accepted, subject to the conditions described in § 35.6 of this part, if the Accepting Official finds that:

(a) The proposing bank is an agricultural bank;

(b) The proposing bank's current capital is in need of restoration, but the bank remains an economically viable, fundamentally sound institution;

(c) There is no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans and related assets; and

(d) The proposing bank has submitted a capital plan approved by the Office or the Accepting Official that will restore its capital to an acceptable level.

§ 35.6 Conditions on acceptance.

All acceptances of proposals shall be subject to the following conditions:

(a) The bank shall fully adhere to the approved capital plan and shall obtain the prior approval of the Accepting Official for any modifications to the plan;

(b) With respect to each asset subject to loss deferral under the program, the bank shall maintain accounting records adequate to document the amount and timing of the deferrals, repayments and amortizations;

(c) The financial condition of the bank shall not deteriorate to the point where it is no longer a viable, fundamentally sound institution;

(d) The bank agrees to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

(e) The bank agrees to provide the Accepting Official, upon request, with such information as the Accepting Official deems necessary to monitor the bank's amortization, its compliance with conditions, and its continued eligibility.

§ 35.7 Submission of proposals.

(a) A bank wishing to amortize losses on qualified agricultural loans or other related assets shall submit a proposal to the appropriate Accepting Official.

(b) The proposal shall contain the following information:

(1) Name and address of the bank;

(2) Information establishing that the bank is located in an area the economy of which is dependent on agriculture; such as a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that it is located in such area;

(3) A copy of the bank's most recent Reports of Condition and Income;

(4) If the Reports of Condition and Income fail to show that at least 25 percent of the bank's total loans are qualified agricultural loans, the basis upon which the bank believes that it should be declared eligible to amortize losses;

(5) A capital plan demonstrating that the bank will achieve an acceptable capital level not later than the end of the bank's amortization period. The plan should provide for a realistic improvement in the bank's capital, over the course of the bank's amortization period, from earnings retention, capital injections, or other sources. It should also include specific information regarding dividend levels, compensation to directors, executive officers and individuals who have a controlling interest and their related interests, and payments for services or products furnished by affiliated companies;

(6) A list of the loans and reappraised property upon which the bank proposes to defer loss including for each such loan or property, the following information:

(i) The name of the borrower, the amount of the loan that resulted in the loss, and the amount of the loss;

(ii) The date on which the loss was declared;

(iii) The basis upon which the loss resulted from a qualified agricultural loan;

(7) A certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors, or principal shareholders;

(8) A copy of a resolution by the bank's Board of Directors authorizing submission of the proposal; and

(9) Such other information as the Accepting Official may require.

§ 35.8 Revocation of eligibility.

The failure to comply with any condition in an acceptance or the capital restoration plan is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). Additionally, acceptance of a bank for loss amortization will not foreclose any administrative action against the bank that the Office may deem appropriate.

Date: October 15, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 87-25211 Filed 10-30-87; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective August 11, 1987 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: November 10, 1987.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Research Assistant, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions is available

from the Federal Reserve Banks. This List supersedes the last complete List which was effective August 11, 1987. (Additions and deletions for that List were published at 52 FR 28538, July 31, 1987). The current List includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U and X (12 CFR Parts 207, 220, 221 and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

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

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

American Community Development Group, Inc.
$.01 par common
American Trustee
$1.00 par common
Atcor, Inc.
$.10 par common
Banctexas Group, Inc.
$1.00 par convertible preferred
Battle Mountain Gold Company
Class A, $.10 par common
Cochrane Furniture Company, Inc.
No par common
Commercial Programming Unlimited Inc.
Class A, $.025 par common
Digital Products Corporation
$.01 par common
Electronics, Missiles & Communications, Inc.
$.01—⅔ par common
Flexible Computer Corporation
$.001 par common
Gencorp Inc.
Warrants (expire 03–15–88)
Great American Resources, Inc.
No par common
Hetra Computer and Communications Industries, Inc.
$.01 par common
Hills Stores Company
Series B, $.01 par cumulative exchangeable preferred
Information Solution, Inc.
$.001 par common
Itel Corporation
Class B, Series B, $1.00 par convertible preferred
Karcher, Carl Enterprises, Inc.
9½% convertible subordinated debentures
Kyle Technology Corporation
No par common
Lane Telecommunications, Inc.
$.10 par common
Life Care Communities Corporation
$.01 par common
Masco Industries, Inc.
Depository convertible exchangeable preferred shares
NCA Corporation
No par common
New York City Shoes, Inc.
$.01 par common
Northwest Natural Gas Company
Series $2.375 no par convertible preferred
Oil Securities, Inc.
$.05 par common
Perle Systems Limited
No par common
Polymeric Resources Corporation
No par common
Pratt Hotel Corporation
$.01 par common
Southbrook International Television Company PLC
American Depository Receipts
Stereo Village, Inc.
$.01 par common
Sterling, Inc.
No par common
Thermo Analytical, Inc.
$.10 par common
Tipton Centers, Inc.
$.10 par common
Tops Markets, Inc.
$.01 par common
ZZZZ Best Co., Inc.
$.01 par common, Warrants (expire 12–15–89)

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

All American Gourmet Company
$.10 par common
Amre, Inc.
$.01 par common
Argosystems, Inc.
$.01 par common
Barrister Information Systems Corporation
$.24 par common
Bayou Resources, Inc.
$.01 par common
Best Buy Co., Inc.
$.10 par common
BPI Systems, Inc.
$.01 par common
Bridge Communications, Inc.
No par common
Calmar, Inc.
$.10 par common
Caremark, Inc.
$.01 par common
Carriage Industries, Inc.
$.02 par common
Clear Channel Communications, Inc.
$.10 par common
Clevite Industries, Inc.
$.01 par common, Warrants (expire 06–30–91)
CML Group, Inc.
$.10 par common
Comptek Research Inc.
$.02 par common
Devry, Inc.
$.10 par common
Elder-Beerman Stores Corp., The
No par common
Eldorado Bancorp (California)
No par common

Environmental Treatment & Technologies Corp.
$.10 par common
First Federal Savings & Loan Association of Brooksville
$.01 par common
First Federal Savings Bank of California
$1.00 par common
First Savings Bank of Florida F.S.B.
$.01 par common
First United Financial Services, Inc.
$2.00 par common
General Automation, Inc.
$.10 par common
Home Federal Bank of Florida, F.S.B.
$.01 par common
Jones & Vining, Inc.
$.10 par common
La-Z-Boy Chair Company
$1.00 par common
Leiner, P. Nutritional Products Corporation
No par common
Merchants Group, Inc.
$.01 par common
Metrobanc, Federal Savings Bank (Michigan)
$1.00 par common
Metromail Corporation
$.40 par common
Modulaire Industries
No par common
Monolithic Memories, Inc.
$.02 par common
Nathan's Famous, Inc.
$.10 par common
Network Security Corporation
No par common
Northeast Savings, F.A.
$.01 par common, Series A, $2.25 cumulative convertible preferred
Pan American Mortgage Corp.
$1.00 par common
Porex Technologies Corp.
$.01 par common
Pre-Paid Legal Services, Inc.
$.01 par common
Rainer Bancorporation
$2.50 par common
Real Estate Investment Trust of California
No par shares of beneficial interest
Rent-A-Center, Inc.
$1.00 par common
San/Ban Corporation
No par common
Scholastic Inc.
$.25 par common
Seattle Trust & Savings Bank
$14.00 par common
Shaw's Supermarkets, Inc.
$1.00 par common
Southern Home Savings Bank (Florida)
$1.00 par common
Spectradyne, Inc.
No par common
Triangle Microwave, Inc.
No par common
Trust America Service Corporation
$.01 par common
Two Pesos, Inc.
$.01 par common
Union Warren Savings Bank
$1.00 par common
Vitramon, Inc.
$.10 par common
Zenith National Insurance Company
$1.00 par common

Additions to List

ACMAT Corporation
Class A, no par common
Advanced Polymer Systems, Inc.
$.01 par common
Agouron Pharmaceuticals, Inc.
No par common
Albany International Corp.
Class A, $.001 par common
Allegheny Beverage Corporation
9½% convertible subordinated debentures
American City Business Journals, Inc.
$.01 par convertible exchangeable preferred
American Colloid Company
$1.00 par common
American Mobile Systems Incorporated
$.01 par common
American Passage Marketing Corporation
$.01 par common
Amvestors Financial Corp.
Series A, $1.00 par convertible exchangeable preferred
Anchor Savings & Loan Association (New Jersey)
$1.00 par common
Aneco Reinsurance Company Limited
$.40 par capital
Applied Power, Inc.
Class A, $.20 par common
Art's-Way Manufacturing Company Incorporated
No par common
Astec Industries, Inc.
Warrants (expire 12–30–91)
Atek Metals Center, Inc.
No par common
Autoinfo, Inc.
$.01 par common
Barrett Resources Corporation
$.001 par common
Beauty Labs, Inc.
$.01 par common
Beecham Group, PLC.
American Depository Receipts
Bethel Bancorp (Maine)
$1.00 par common
Brooklyn Savings Bank, the (Connecticut)
$1.00 par common
Businessland, Inc.
5½% convertible subordinated debentures
C.I.S. Technologies, Inc.
No par common
Cade Industries, Inc.
$.001 par common
Warrants (expire 9–24–88)
Calstar, Inc.
$.10 par common,
Warrants (expire 1990)
Cambrex Corporation
$.10 par common
Cambridge Instrument Company, PLC., the
American Depository Receipts
Castle Energy Corporation
$.05 par common
Catalyst Thermal Energy Corporation
$.10 par common
Celgene Corporation
$.01 par common
Centel Cable Television Company
Class A, $.01 par common
Centex Telemanagement, Inc.
$.01 par common
Chase Medical Group, Inc.
$.01 par common
Chemfix Technologies, Inc.
Warrants (expire 12–15–88)
Cherne Enterprises Inc.
No par common
City Holding Company
$2.50 par common
City Resources (Canada) Ltd.
No par common
Cognos Incorporated
No par common
Colorocs Corporation
$.05 par common
Comcast Corporation
5½% convertible subordinated debentures
Communications & Cable, Inc.
$.05 par common
Communications Transmission, Inc.
$.01 par common
Conmed Corporation
$.01 par common
Convex Computer Corporation
6% convertible subordinated debentures
Corporate Software Incorporated
$.01 par common
CPB, Inc.
$5.00 par common
Craft World International, Inc.
$.01 par common
Criticare Systems, Inc.
$.04 par common
Crossland Savings, FSB (New York)
Series B, $12.75 cumulative preferred
Crystal Oil Company
$.01 par common
$.01 par convertible preferred
Dallas Semiconductor Corporation
$.02 par common
Dstaline, Inc.
$.001 par common
Dataphaz, Inc.
$.001 par common
Diagnostek, Inc.
$.01 par common,
Class B, warrants (expire 3–31–88)
Digitext, Inc.
$.01 par common
Domain Technology, Incorporated
$.01 par common
Dyansen Corporation
$.01 par common,
Class A, warrants (expire 1988)
Earth Technology Corporation (USA), the
$.10 par common
Eastex Energy, Inc.
$.01 par common
Eliot Savings Bank (Massachusetts)
$.10 par common
Encor Energy Corporation
No par common
English China Clays, PLC
American Depository Receipts
Entree Corporation
$.01 par common
Entronics Corporation
$.01 par common
Environmental Power Corporation
$.01 par common
Equipment Company of America
$.10 par common
Everex Systems, Inc.
$.001 par common
Fastenal Company
$.01 par common
Filenet Corporation
$.01 par common
First American Savings Bank, F.S.B. (Ohio)

$1.00 par common
First Commercial Bancshares, Inc. (Alabama)
$10.00 par common
First Essex Bancorp, Inc.
$.10 par common
First Federal Savings Bank of Charlotte County (Florida)
$1.00 par common
First Federal Savings Bank of Elizabethtown (Kentucky)
$1.00 par common
First of America Bank Corporation (Michigan)
9% convertible preferred, $11.00 par value
Flextronics, Inc.
$.01 par common
Frances Denney Companies, Inc., the
$.01 par common
Gen-Probe Incorporated
$.01 par common
Gendex Corporation
$1.00 par common
Goldtex, Inc.
$.10 par common
Greencastle Federal Savings Bank (Indiana)
$.01 par common
Harding Associates, Inc.
$.01 par common
Harleysville Savings Association (Pennsylvania)
$1.00 par common
Harold's Stores, Inc.
$.01 par common
HHB Systems, Inc.
$.01 par common
Hi-Port Industries, Inc.
$.05 par common
Hilb, Royal and Hamilton Company
No par common
Home Federal Savings Bank (Xenia, Ohio)
$.01 par common
Home Office Reference Laboratory, Inc.
$.01 par common
Hospital Newspapers Group, Inc.
$.001 par common
Hunter-Melnor, Inc.
$.01 par common
II-VI Incorporated
No par common
Impact Systems, Inc.
$.001 par common
Ingles Markets, Incorporated
Class A, $.05 par common
Intel Corporation
Warrants (expire 08-15-88)
Interfederal Savings Bank (Tennessee)
$1.00 par common
International Telecharge, Inc.
$.01 par common
Isoetec Communications, Inc.
$.01 par common
Jason, Incorporated
$.10 par common
Jepson Corporation, the
$.01 par common
Jetborne International, Inc.
$.01 par common
Johnson Worldwide Associates, Inc.
Class A, $.05 par common
Lake Shore Bancorp, Inc. (Illinois)
$10.00 par common
Lexington Group, Inc., the
$.01 par common
McCaw Cellular Communications, Inc.
Class A, $.01 par common
Medical Action Industries, Inc.
$.001 par common
Melamine Chemicals, Inc.
$.01 par common
Middleby Corporation, the
$.01 par common
Miners National Bancorp, Inc.
$5.00 par common
Morsemere Financial Group, Inc.
$.10 par common
Moto Photo, Inc.
$.01 par common
Multi-Color Corporation
No par common
New Jersey Savings Bank
$2.00 par common
Newmark Illinois Corporation
$.01 par common
Normandy Oil & Gas Company, Inc.
$.10 par common
Norton Enterprises, Inc.
$.01 par common
Oncor, Inc.
$.01 par common
Onondaga Savings Bank (New York)
$1.00 par common
Pacific Silver Corporation
$.25 par common
Paperboard Industries Corporation
No par common
Parkvale Savings Association (Pennsylvania)
$1.00 par common
Penn Treaty American Corporation
$.10 par common
Pennview Savings Association (Pennsylvania)
$1.00 par common
Peters, J.M. Company, Inc.
$.10 par common
Petroleum Development Corporation
$.01 par common
Photon Technology International
No par common
Precision Target Marketing, Inc.
$.01 par common, Warrants (expire 2-23-88)
Premier Bankshares Corporation (Virginia)
$2.00 par common
Price Pfister, Inc.
$.01 par common
Pronet, Inc.
$.01 par common
Qmax Technology Group, Inc.
$.01 par common
Quartz Mountain Gold Corporation
No par common
Railroad Savings & Loan Association (Kansas)
$1.00 par common
Rise Technology, Inc.
$.01 par common
Rockingham Bancorp (New Hampshire)
$1.00 par common
Royal Business Group, Inc.
$1.00 par common
Royalpar Industries, Inc.
Warrants (expire 1-20-92)
S.N.L. Financial Corporation
Class A, $2.00 par common
Sag Harbor Savings Bank (New York)
$1.00 par common
Sage Analytics International, Inc.
$.001 par common
Scanforms, Inc.
$.01 par common
SDNB Financial Corp.
No par common
Seagate Technology
6¾% convertible subordinated debentures
Security Financial Group, Inc.
$.10 par common
Skyline Chili, Inc.
No par common
Software Services of America, Inc.
$.01 par common
Spectramed, Inc.
$.01 par common
Spiegel, Inc.
Class A, non-voting, $1.00 par common
St. Ives Laboratories Corporation
$.01 par common
Steel of West Virginia, Inc.
$.01 par common
Structural Dynamics Research Corporation
Class A, $.0278 par common
Summagraphics Corporation
$.01 par common
Sun Microsystems, Inc.
5¼% convertible subordinated debentures
Telemundo Group, Inc.
$.01 par common
Teradata Corporation
$.01 par common
Texas American Energy Corporation
$2.575 cumulative convertible exchangeable preferred
Texcel International Inc.
Warrants (expire 7-3-89)
TM Communications, Inc.
$.01 par common, Warrants (expire 12-1-87)
Total Assets Protection
$.002 par common
Tucker Holding Company, Inc.
$.10 par common
United Building Services Corporation of Delaware
$.01 par common
United Newspapers, PLC
American Depository Receipts
United Savings and Loan Association (South Carolina)
$1.00 par common
Valcom, Inc.
$.10 par common
Vikonics, Inc.
$.02 par common
Vipont Pharmaceutical, Inc.
Warrants (expire 6-25-89)
Virgin Group, PLC
American Depository Receipts
Vista Organization, Ltd., The
$.001 par common
Walshire Assurance Company
$.01 par common
Ward White Group, PLC.
American Depository Receipts
Wheelabrator Technologies, Inc.
$.01 par common
Wolf Financial Group, Inc.
$.01 par common
Workingmens Co-Operative Bank (Massachusetts)
$.10 par common
Xscribe Corporation
No par common

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and

Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), October 26, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-25253 Filed 10-30-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

Agricultural Loan Loss Amortization

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: These interim regulations implement Title VIII of the Competitive Equality Banking Act of 1987 which permits agricultural banks to amortize losses on qualified agricultural loans. The regulation describes the procedures and standards applicable to banks desiring to amortize losses under that statute. It also describes the manner in which such amortizations are to be done. Although the interim rule is effective November 9, 1987, the Corporation is requesting comments from the public prior to adopting a final regulation.

DATES: Interim rule is effective November 9, 1987 and will terminate on June 30, 1988 unless otherwise superseded. Comments must be received on or before January 8, 1988.

ADDRESS: Comments should be sent to the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments will be available for inspection and photocopying at the same address.

FOR FURTHER INFORMATION CONTACT: William C. Crothers, Examination Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-6906.

SUPPLEMENTARY INFORMATION: Title VIII of the Competitive Equality Banking Act of 1987 (the "Statute") permits agricultural banks to amortize (1) losses on qualified agricultural loans and (2) losses suffered as the result of an appraisal of other related assets, incurred between December 31, 1983, and January 1, 1992. The Statute also requires that the Federal banking agencies issue implementing regulations no later than 90 days after its enactment. The interim regulation is intended to comply with this statute. The other Federal banking agencies (the Board of Governors of the Federal Reserve System and the Comptroller of the Currency) are adopting substantially identical regulations, containing only technical variations necessary to accommodate their slightly different situations.

Definitions

The interim regulation adopts a definition of "agricultural bank" that is essentially the same as the language of the Statute. Included in the Statute's definition of an agricultural bank is a bank that does not meet the agricultural loan volume test (agricultural loans, including deferred losses, are 25% or more of total loans) but has been recommended to the FDIC for eligibility by the bank's state regulator. Because of the regulation's flexibility in defining agricultural loans (see discussion below), it is anticipated that such recommendation rarely will be necessary.

The definition of "qualified agricultural loan" incorporates the definitions of "loans to finance agricultural production and other loans to farmers" and "loans secured by farm land" contained in the Schedule RC-C of the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income ("call report"). The call report definitions are virtually identical to those contained in the Statute, but provide the additional benefits of being more comprehensive and of permitting the agencies to use the call reports as the predominate monitoring device for the amortization program. Additionally, as suggested by the Statute, the FDIC has retained discretion to deem other types of loans and leases to be "qualified" if the requesting bank demonstrates those loans and leases to be sufficiently related to agriculture.

While the Statute uses the phrase "located in an area the economy of which is dependent on agriculture," the agencies have not attempted to describe an agricultural area. Adopting a list of acceptable counties or geographic regions might leave the erroneous impression that a bank located outside such an arbitrary area could not qualify even though it might otherwise qualify as an "agricultural bank." Further, the definition of "agricultural bank" itself limits eligible banks to a size ($100,000,000 in assets) that would normally exclude banks not dealing substantially in agricultural credit. Thus, each application should include a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that it is located in an agricultural area.

Loss Amortization

The purpose of the Statute is best accomplished by permitting eligible banks to amortize losses on qualified agricultural loans and other related assets by reporting the amount of such deferred losses in new items in the asset and equity capital sections of the balance sheet of their Report of Condition. This approach will provide for the disclosure of deferred losses, will not distort reported income and will facilitate the monitoring of the bank's participation in the loss deferral program through regular, quarterly call reports. Moreover, the full unamortized balance of deferred losses will be included in primary capital for all regulatory and supervisory purposes by the three federal banking agencies. (The applicability of these deferrals on state lending limits or other State statutes must be addressed by the individual state).

The section on loss amortization and reappraisal addresses two issues: (1) What losses are subject to amortization and (2) how they may be amortized. On the first issue, the interim rule reflects Congress' clear intent that losses resulting from fraud or criminal abuse on the part of the bank, its officers, directors, or principal shareholders not be eligible for amortization. Accordingly, where a bank has been found eligible to participate in the loss amortization program even though an insignificant amount of its losses on agricultural loans arose from insider fraud or criminal abuse, those fraudulent losses will not be eligible for amortization.

Additionally, it should be noted that the Statute requires there be "no evidence of" fraud or criminal abuse. Accordingly, under the interim rule, it is not necessary that the existence or absence of such fraud or criminal abuse be conclusively established to disqualify a loan or, as discussed below, a bank.

To be eligible for amortization under the regulation, a loss on a qualified agricultural loan must have been required to be reflected in the bank's financial statements for the years 1984 through 1991. Similarly, charge-offs that result from a reappraisal or sale of real or personal property, acquired in connection with a qualified agricultural loan, may be amortized if the property is owned on the effective date of the Regulation or is acquired before January 1, 1992.

With respect to the manner of amortization the Statute provides that

the loss shall be amortized over a period not to exceed seven years as provided in regulations issued by the Federal banking agencies. The interim regulation provides that amortization shall occur on a quarterly straight-line basis.

The interim regulation permits qualified losses to be amortized over a period not to exceed seven years beginning in the quarter following the date of loss. Losses sustained in years prior to the effective date of the regulation would be treated as if amortized over seven years beginning in the quarter following date of the loss. Thus, a bank could take only the amortizations that remain for such a loss after it enters the program. For example, if a bank began to participate in the program in the last quarter of 1987 and had a loss sustained in the fourth quarter of 1985, that loss would be amortized over a seven year period beginning in 1986. Therefore, five sevenths of the 1985 loss would remain to be amortized as of year-end 1987.

Accounting for Amortization

The interim regulation directs that in accounting for loss amortization, a bank should restate its capital and other relevant accounts in accordance with the FFIEC instructions for the call reports. Those instructions will continue to require the reporting of actual loan charge-offs and recoveries through the Allowance for Loan and Lease Losses, but will then permit losses eligible for deferral to be reinstated in new items in the asset and equity capital sections of the balance sheet of the Report of Condition. Additionally, the interim regulation provides that any resulting increase in the capital account shall be treated as primary capital for purposes of determining the bank's compliance with various Federal regulations such as 12 CFR Part 325 and others.

Eligibility

Under the interim regulation, any bank desiring to participate in the program will be required to submit to the appropriate Federal banking agency a proposal establishing both its eligibility and the eligibility of the losses it proposes to amortize. In order to be eligible, the proposing bank must be an "agricultural bank" as defined in the regulation.

Further, the proposing bank's current capital must be in need of restoration, but, the bank must also be an economically viable, fundamentally sound institution. Therefore, a bank with capital below levels established by 12 CFR Part 325 or that is subject to an enforcement action related to capital, can be eligible. Acceptance of a bank's capital plan for loss amortization will normally relieve the bank of any inconsistent provisions dealing with capital in any extant agency order, agreement, or directive. Requests for such relief should be included as part of the bank's proposal to utilize loss amortization.

The legislative history of the Statute indicates that Congress intended only banks with capital in need of restoration be permitted to amortize losses. Banks that have experienced capital declines, but that retain an acceptable amount of capital have no need to amortize or defer their recognition of losses. Congress clearly was aware of this fact in that it required as an essential condition of eligibility the submission of a plan to restore capital to a level acceptable to the banking agency.

In order to be approved, the capital plan must be based upon realistic projections as to earnings and other material factors that accurately reflect conditions in the bank's market area. Further, it should address dividend levels, compensation to directors, executive officers and individuals who have a controlling interest and their related interests; and payments for services or products furnished by affiliated companies.

Viability is not defined in the regulation. It is a judgment based on many variables. One measure of viability would be whether a bank has traditional funding and earnings sources of acceptable quality within its market area sufficient to permit the bank to earn a reasonable profit in a normal economic environment while achieving and maintaining a capital level that provides the capacity to operate throughout the normal downturns in economic cycles without suffering severe financial problems. Usually, a bank will be considered viable if it has a reasonable prospect of remaining a going concern throughout the program and at the end of the amortization period.

Congress intended that only banks with reasonable prospects for survival should be permitted to amortize losses; the legislative history indicates that the Statute was intended to permit "fundamentally sound banks to weather this storm." Cong. Rec. S3941 (March 26, 1987). To permit non-viable institutions to amortize losses would merely increase the loss exposure of the Federal Deposit Insurance Corporation with no countervailing public benefit.

The regulation does not prescribe any absolute level of capital to be achieved. Part 325 of the FDIC's rules and regulations (12 CFR Part 325) already establishes minimum capital standards for well-run banks in satisfactory financial condition. Each bank's individual circumstances will be evaluated during review of the requisite capital plan. This approach parallels the current practices under the agency's existing capital forbearance program.

An additional criterion for eligibility is that there be no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans. Literally read, the Statute would seem to disqualify any bank in which there was evidence that losses resulted from fraud or criminal abuse, no matter how small in amount the losses were. Certainly, where insider fraud results in significant agricultural loan losses, the bank should be disqualified. Congress intended the Statute to "provide assistance for agricultural banks, who through no fault of their own, are being squeezed by the ongoing agricultural crisis * * * " *Id.* However, a reasonable interpretation of the Statute, adopted in the interim regulation, would disqualify only banks where significant fraud losses occurred.

Conditions on Acceptances

The interim regulation specifies that any acceptance of a proposal will be subject to certain conditions. These conditions are designed to ensure that a bank continues to meet the eligibility requirements and is properly amortizing losses under the program. First, the bank must fully adhere to the approved capital plan or to obtain the prior approval of any modifications to the plan. Second, the bank must maintain accounting records adequate to document the amount and timing of deferrals, recoveries, and amortizations for each loss subject to deferral under the program. Third, the bank must remain a viable, fundamentally sound institution. Fourth, the bank must agree to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans not lower than the percentage of such loans in its loan portfolio on January 1, 1986. The definition of qualified agricultural loans (see § 324.2 (b)(3)) includes the uncollected balance of charged-off loans the losses on which have been deferred under this regulation. Therefore these balances also may be used in calculating the maintenance ratio. Fifth, participating banks must provide the agency, upon request, any information necessary to monitor the bank's amortization or its compliance with conditions, or its continued eligibility under the program. The failure of a bank

to comply with any condition is grounds for revocation of an acceptance and termination of eligibility to participate in the loss deferral program. Finally, a violation of a condition may result in an administrative action against the bank under 12 U.S.C. 1818(b) because such conditions are imposed in connection with the granting of a request.

Submission of Proposals

The regulation lists the content of proposals to be submitted by banks desiring to participate in loss amortization. In addition to the items previously discussed, the proposal shall include a copy of a resolution by the bank's board of directors authorizing submission of the proposal. This is to ensure that the board of directors has been fully informed. FDIC approval of an amortization proposal will include instructions covering the possible amortization of future losses.

Special Studies

Regulation Flexibility Act

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

Paperwork Reduction Act

The information collection requirements contained in the interim rule were reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 324

Banks, banking, State nonmember banks.

12 CFR Part 324 is added to Subchapter B as follows:

PART 324—AGRICULTURAL LOAN LOSS AMORTIZATION

Sec.

Authority: 12 U.S.C. 1823(j), 1819, and 12 U.S.C. 1811–1831d.

§ 324.1 Authority.

This part is issued by the Federal Deposit Insurance Corporation ("Corporation") pursuant to 12 U.S.C. 1823(j), 1819, and other provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811–31d).

§ 324.2 Definitions.

For purposes of this part:

(a) "Agricultural Bank" means a state nonmember bank, except a district bank,

(1) The deposits of which are insured by the Corporation;

(2) Which is located in an area of the country the economy of which is dependent on agriculture;

(3) Which has total assets of $100,000,000 or less as of the most recent Report of Condition; and

(4) Which has—

(i) At least 25 percent of its total loans in qualified agricultural loans; or

(ii) Less than 25 percent of its total loans in qualified agricultural loans, but which bank the appropriate state banking authority has recommended to the Corporation and which the Corporation accepts for eligibility under this part or which the Corporation on its own motion deems eligible hereunder.

(b) "Qualified Agricultural Loan" means—

(1) Loans qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purpose of Schedule RC–C of the FFIEC Consolidated Report of Condition and Income or such other comparable schedule as may be in effect;

(2) Other loans and leases that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Corporation; and

(3) The remaining unpaid balance of any loans as described in paragraphs (b)(1) and (2) of this section that have been charged off since January 1, 1984, and that qualify for deferral under this regulation.

(c) "Accepting Official" means the Director, Division of Bank Supervision or his designees.

§ 324.3 Loss amortization and reappraisal.

(a) Provided that there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, its officers, directors or principal shareholders, a bank that has been accepted under this part may, in the manner described below, amortize on its Reports of Condition and Income:

(1) Any loss on any qualified agricultural loan that the bank would be required to reflect in its annual financial statements for any year between and including 1984 to 1991; and

(2) Any loss that the bank would be required to reflect in its financial statements resulting from a reappraisal or sale of currently owned property, real or personal, that it acquired in connection with a qualified agricultural loan and any such additional property that it acquires prior to January 1, 1992.

(b) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loss was or is charged off so as to be fully amortized not later than December 31, 1998.

§ 324.4 Accounting for amortization.

Any bank which is permitted to amortize losses in accordance with § 324.3 may restate its capital and other relevant accounts and account for future authorized deferrals and amortizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in primary capital under 12 CFR Part 325.

§ 324.5 Eligibility.

A proposal submitted in accord with § 324.7 shall be accepted, subject to the conditions described in § 324.6, if the Accepting Official finds:

(a) The proposing bank is an agricultural bank;

(b) The proposing bank's current capital is in need of restoration, but the bank remains an economically viable, fundamentally sound institution;

(c) There is no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans and related assets; and

(d) The proposing bank has submitted a capital plan approved by the Corporation or the Accepting Official that will restore its capital to an acceptable level.

§ 324.6 Conditions on acceptance.

All acceptances of proposals shall be subject to the following conditions:

(a) The bank shall fully adhere to the approved capital plan and shall obtain the prior approval of the Accepting Official for any modifications to the plan;

(b) With respect to each asset subject to loss deferral under the program, the bank shall maintain accounting records adequate to document the amount and timing of the deferrals, repayments and amortizations;

(c) The financial condition of the bank shall not deteriorate to the point where it is no longer a viable, fundamentally sound institution;

(d) The bank shall agree to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

(e) The bank shall agree to provide the Accepting Official, upon request, with such information as the Accepting Official deems necessary to monitor the bank's amortization, its compliance with conditions, and its continued eligibility.

§ 324.7 Submission of proposals.

(a) A bank wishing to amortize losses on qualified agricultural loans or other related assets shall submit a proposal to the Division of Bank Supervision Regional Director of the region in which the bank is located.

(b) The proposal shall contain the following information:

(1) Name and address of the bank;

(2) Information establishing that the bank is located in an area, the economy of which is dependent on agriculture such as a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that the bank is located in an area dependent on agriculture;

(3) A copy of the bank's most recent Reports of Condition and Income;

(4) If the Report of Condition fails to show that at least 25 percent of the bank's total loans are qualified agricultural loans, the basis upon which the bank believes that it should be declared eligible to amortize losses;

(5) A capital plan demonstrating that the bank will achieve an acceptable capital level not later than the end of the bank's amortization period (the plan should provide for a realistic improvement in the bank's capital, over the course of the bank's amortization period, from earnings retention, capital injections, or other sources and include specific information regarding dividend levels, compensation to directors, executive officers and individuals who have a controlling interest, and payments for services or products furnished by affiliated companies or companies which are related interests of insiders);

(6) A list of the loans and reappraised property upon which the bank proposes to defer loss including, for each such loan or property, the following information:

(i) The name of the borrower, the amount of the loan that resulted in the loss, and the amount of the loss;

(ii) The date on which the loss was declared;

(iii) The basis upon which the loss resulted from a qualified agricultural loan;

(7) A certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors, or principal shareholders;

(8) A copy of a resolution by the bank's Board of Directors authorizing submission of the proposal; and

(9) Such other information as the Accepting Official may require.

(Approved by the Office of Management and Budget under control number 3064–009)

§ 324.8 Revocation of eligibility.

If the bank fails to continue to meet eligibility requirements or to comply with the capital plan or any condition of an acceptance, the Accepting Official may notify the bank of the intent to revoke authorization for deferral of losses. The bank will have 60 days from receipt of the notice in which it may submit written objections and reasons why authorization should continue. If no written objections are received within 60 days, the revocation shall be final. If the bank submits objections, they will be considered and a final decision, or a request for additional information, shall be made within the next 30 days.

§ 324.9 Other Administrative actions.

Acceptance of a bank for loss amortization does not foreclose any administrative action against the bank that the Corporation may deem appropriate.

By order of the Board of Directors. Dated at Washington, DC this 27th day of October 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–25329 Filed 10–30–87; 8:45 am]

BILLING CODE 6714–01–M

---

12 CFR Part 325

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending its capital regulation based on its experience in implementing this regulation since it became effective in April 1985. The amendments (1) clarify and revise certain definitions, (2) reserve the authority of the FDIC with respect to the definitions of "primary capital" and "secondary capital," (3) specify that the terms and conditions to which capital instruments are subject must be consistent with safe and sound banking practices, and (4) limit on the basis of insurance status the circumstances in which the FDIC will not approve a proposed merger transaction when the resulting entity will not meet the FDIC's minimum capital requirement. These amendments will benefit both the FDIC and insured banks by providing the FDIC with greater flexibility in administering its capital regulation.

EFFECTIVE DATE: December 2, 1987.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, telephone (202) 898–6903.

SUPPLEMENTARY INFORMATION: On February 11, 1985, the Board of Directors of the FDIC adopted a final rule on capital maintenance (12 CFR Part 325) which became effective on Apri1 18, 1985. 50 FR 11128 (1985). The Office of the Comptroller of the Currency ("OCC") and the Board of Governors of the Federal Reserve System ("FRB") took similar action during the first half of 1985, resulting in the establishment of uniform minimum capital standards for all federally supervised banking organizations. In light of the FDIC's two years of experience in implementing its capital regulation, the Board of Directors determined, on March 31, 1987, that certain definitions and other provisions of the regulation should be modified. Accordingly, the FDIC issued for a 60-day comment period proposed amendments to Part 325. 52 FR 11660 (1987).

The comment period ended on June 9, 1987, and the FDIC received one comment letter. That letter dealt solely with the proposed revision of the definition of the term "subordinated note or debenture." Therefore, with the addition of the clarification to this definition recommended by the one commenter and certain other refinements, the FDIC is adopting the amendments to its capital regulation in essentially the same form as they were originally proposed. Each of the amendments to Part 325 is discussed below.

Revisions to Definitions

Assets classified loss. The FDIC calculates primary capital as of the dates that examinations are conducted

and at dates between examinations. While the longstanding practice of the FDIC has been to calculate examination date capital ratios by deducting from capital the amount of assets classified loss as of that date, the existing definition of "assets classified loss" is ambiguous in this respect. In addition, the definition incorporates the term "bank," which refers only to insured state nonmember banks, instead of the broader term "insured bank." Because the FDIC measures the primary capital of insured banks in certain circumstances, the definition of "assets classified loss" should extend to insured banks in general. Therefore, the FDIC has revised this definition accordingly.

Insured banks are expected to adopt policies and procedures for the timely identification and recognition of losses. However, bank managements on occasion will determine that a loan or other asset (or a portion thereof) is uncollectable, but will delay the charge-off of this loss until a later date. In such situations, the failure to record the loss that has been incurred results in an overstatement of the bank's capital. Therefore, in conjunction with the revision to the definition of "assets classified loss" described above, the FDIC believes it is appropriate to further amend this definition to include those assets that an insured bank identifies as losses between examinations but has not charged off from its books.

Subordinated note or debenture. In order for an obligation to satisfy the definition of "subordinated note or debenture," a form of secondary capital, the instrument must meet certain requirements. Those pertaining to subordination and minimum maturity have led to implementation questions since the regulation became effective in April 1985. Two other requirements that have been part of the FDIC's policies for subordinated debt for at least five years have not previously been included in the definition.

The capital regulation's definition of a subordinated note or debenture incorporated relevant portions of the definition of this term that appeared in the FDIC's deposit interest rate regulations (12 CFR Part 329) that were in effect when Part 325 was adopted in 1985. Part 329 was subsequently amended by the FDIC effective April 1, 1986, as a result of the completion of the elimination of rate ceilings on interest-bearing deposits. The amended interest rate regulation deleted the previous version's provision on subordinated notes and debentures. Because it was simply carried over from the FDIC's interest rate regulations, the subordinated debt definition in Part 325 indicates (as it did in Part 329 prior to its amendment) that such debt obligations must be subordinated to the claims of depositors, but it makes no mention of subordination to the claims of other creditors. Nonetheless, because subordinated notes are treated as secondary capital, the FDIC believes that and, when asked, has indicated that subordinated notes, by their very nature from a capital adequacy perspective, must be subordinate to all but equity capital accounts. To clarify the issue of subordination, the FDIC has amended its subordinated debt definition. In doing so, the FDIC has also replaced the term "liabilities" which appeared in the proposed amendment of this definition with the more general term "obligations" to avoid possible improper inferences that subordination applies only to those obligations specifically identified as liabilities on the issuing bank's balance sheet.

In this regard, the FDIC notes that the OCC's capital regulation (12 CFR Part 3) indirectly provides for the general subordination of a subordinated note or debenture issued by a national bank by mandating that such debt must be approved as capital by the OCC in order to qualify as secondary capital. The separate OCC rule governing subordinated debt as capital (12 CFR 5.47) requires that to obtain approval for an issue, it must comply with certain requirements, one of which deals with the priority of subordinated noteholders over other creditors of the bank. The *Comptroller's Manual for Corporate Activities* contains a model general subordination clause (which uses the term "obligations" rather than "liabilities") and states that substantially this same clause must appear in every subordinated note or debenture.

In order for an obligation to qualify as a subordinated note or debenture under Part 325, it must satisfy a seven-year minimum maturity requirement although an obligation with a shorter original maturity is permissible in "exigent circumstances." The FDIC has amended the regulation to delegate to the Director of the Division of Bank Supervision the authority to determine whether such circumstances exist when a bank proposes to issue subordinated debt with an original maturity that is less than the seven years that would otherwise be required.

In addition, banks periodically seek to issue subordinated debt instruments which contain a provision permitting the bank at its option to redeem the debt on or after a specified date prior to its contractual maturity date. Since the definition of subordinated debt prescribes a "maturity" of at least seven years, the FDIC has been questioned as to the meaning of this term when a debt instrument has an optional redemption ("call") provision. The FDIC has taken the view that an optional redemption feature that allows the issuing bank to call all or part of a subordinated debt issue in less than seven years should not prevent an issue with a contractual maturity of seven years or more from satisfying the minimum maturity requirement provided the FDIC does not grant advance consent to the redemption of the debt at its call date when the debt is being issued. Accordingly, the FDIC has added an interpretive rule to Part 325 that will set forth this position.

Section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)) provides that an insured state nonmember bank must obtain the consent of the FDIC prior to the retirement of any part of its capital notes or debentures. To ensure that all parties involved, including future holders of the notes or debentures, are aware of the requirements of section 18(i)(1), the FDIC has for many years required issues of subordinated debt to include a statement concerning the prior consent rule in the debt instrument and related agreements. The FDIC has amended the subordinated debt definition to incorporate this disclosure policy. Moreover, this amendment clarifies that the FDIC's prior consent must be in writing since the original proposal did not specifically indicate the form in which the FDIC gives its consent.

Consistent with the provisions of the subordinated debt definition concerning the subordination of the obligation and its unsecured status and with the statutory prior consent for retirement rule, the FDIC has, for at least five years, required new issues of bank-to-bank subordinated debt to include a specific waiver of the right of offset by the lending institution. In order to assure that bankers are aware of this policy when they are planning new issues of subordinated debt, the FDIC has made this waiver policy an explicit part of the definition.

The one letter that the FDIC received in response to its request for comments on the proposed amendments to Part 325 addressed the revisions to the subordinated debt definition. The banker submitting this letter correctly observed that the proposal failed to make reference to whether the revised definition would apply only to debt

instruments issued after the regulation had been amended or whether existing debt instruments would need to satisfy the amended definition in order to qualify as a component of secondary capital.

When the FDIC issued its proposed amendments, it had intended that the revised definition of subordinated debt would apply prospectively and not to instruments already in existence that had satisfied the subordinated debt definition in effect at the time the instruments were issued. As the one comment letter pointed out, banks would find it difficult and costly to obtain creditor modifications of contractual provisions in existing debt instruments if it were necessary to do so in order for such debt to continue to be counted in secondary capital. The FDIC therefore agrees with the commenter's recommendation that the status of existing subordinated debt instruments should be clarified. The revised subordinated debt definition now includes a footnote to indicate that it applies only to instruments issued on or after the effective date of the amended regulation.

Total Assets. For purposes of Part 325, "total assets" uses an average dollar amount for total assets taken from a bank's most recent quarterly Call Report. The current definition also discloses the locations in the commercial bank and the savings bank Call Reports where this average is reported. Because the savings bank Call Reports were extensively revised as of the March 31, 1986 report date, the disclosure of where the average of total assets may be found has been updated accordingly.

Reservation of Authority

Section 325.5(c) currently permits the FDIC to deduct from primary capital any capital instrument or balance sheet entry that would otherwise increase an insured bank's primary capital but which fails to provide capital support in the form of a cushion to absorb losses. However, this provision of the regulation does not address similar situations that might relate to secondary capital.

While Part 325 authorizes the FDIC to make deductions from capital when appropriate, the regulation does not allow for the possibility that new types of capital instruments or particular balance sheet accounts not specifically identified as components of primary or secondary capital in the definitions of those terms (§§ 325.2 (h) and (i)) may be functionally equivalent to certain capital components. The absence of authority for the FDIC to accommodate such instruments or accounts within its capital adequacy framework restricts the FDIC's flexibility when these developments occur. For example, the Federal Reserve Board decided last year to treat perpetual debt issues that satisfy certain conditions as a primary capital component for bank holding companies based on a determination that such debt is the functional equivalent of perpetual preferred stock, a primary capital component. 51 FR 40963 (1986). The FDIC also recognizes that some banks establish valuation allowances (general reserves) for debt securities or for other real estate owned that are created in the same manner as, i.e., through charges to expense, and serve the same purpose as the allowance (reserve) for loan and lease losses. However, only this latter allowance (reserve) can qualify as primary capital at present. Nonetheless, in no case would a specific reserve that has been established for and allocated to a known loss (or losses) be eligible to count as primary capital.

To remedy this situation, the FDIC has amended its existing § 325.5(c) along the lines of the reservation of authority provision contained in the OCC's capital regulation (12 CFR 3.4). The authority so reserved would be exercisable by the Director of the Division of Bank Supervision on behalf of the Board of Directors of the FDIC. Such a change is also consistent with the Federal Reserve Board's capital adequacy guidelines which "give the Board flexibility to adjust capital requirements and definitions to changes in the economy, in financial markets, and in banking practices." 50 FR 16060 (1985).

Covenants Inconsistent with Safe and Sound Banking Practices

The mission of the FDIC and its Division of Bank Supervision includes a responsibility for promoting safe and sound banking practices. Section 325.1 of the FDIC's capital regulation states that the FDIC "must evaluate capital, as an essential component, in determining the safety and soundness of banks it insures and supervises." Therefore, as an integral part of its evaluation of capital, the FDIC must consider whether any of the instruments that a bank would count as part of its capital structure includes conditions, covenants, terms, restrictions, or provisions which raise safety and soundness concerns. The FDIC has been encountering debt instruments that were intended by their issuers to qualify as primary or secondary capital which contained or were subject to such conditions, covenants, terms, restrictions, or provisions.

The FDIC's Statement of Policy on Capital, which was adopted at the same time as its capital regulation, provides that "issues of perpetual preferred stock [must] be consistent with safe and sound banking practices." 50 FR 11141 (1985). While the FDIC believes that such a condition applies implicitly to all capital instruments, it is now making this policy position explicit by adding a new § 325.5(f) to its capital regulation and by providing in an interpretive ruling examples of conditions, covenants, terms, restrictions, and provisions that are considered inconsistent with safe and sound banking practices. Moreover, to ensure that the language of the new section and ruling is more fully comprehensive, the terms "conditions" and "provisions" were added to the three terms that appeared in the proposed amendment. Further, it should be noted that the examples in the interpretive ruling are not intended to be an exhaustive listing since other provisions in capital instruments may be found that would be of similar concern to the FDIC. In this regard, the FDIC is considering the effect that certain conditions and covenants in capital instruments have had and may have on its ability to resolve failing bank situations and may develop a proposal to address this issue at a later date.

The language of § 325.5(f) is drawn from the FRB's capital guidelines (12 CFR Part 225, Appendix A) as are certain of the examples in the interpretive ruling. Other examples are taken from criteria first adopted by the FRB and the OCC in 1976 for evaluating debt issues as additions to a bank's capital structure. 41 FR 26200 (1976) and 41 FR 47969 (1976), respectively.

Merger Transactions Subject to FDIC Approval

The current language of § 325.3(c)(4) of the FDIC's capital regulation bars the FDIC from approving merger transactions when the resulting entity does not meet the FDIC's minimum capital requirements, regardless of the insurance status of the resulting entity. This section of the regulation is derived from the provision contained in section 18(c)(5) of the Federal Deposit Insurance Act ("FDI Act") which mandates that, for every merger transaction that requires the agency's prior written approval, the FDIC "shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions." While the FDIC is required to consider these factors, an insured bank merger transaction may produce a

resulting institution whose deposits will be insured by another federal insurance agency, e.g., the Federal Savings and Loan Insurance Corporation ("FSLIC"), and for which the FDIC will provide no residual insurance coverage. Recognizing that the FDIC has no further exposure in this situation after the merger has been completed, the FDIC had proposed to amend § 325.3(c)(4) to specifically eliminate such mergers from its coverage.

In the meantime, the Competitive Equality Banking Act of 1987 (Pub. L. 100–86) ("CEBA") has been enacted into law. Section 504(b) of CEBA amended section 18(c) of the FDI Act to exempt from the prior FDIC written approval requirement any merger transaction where the resulting institution will be insured by the FSLIC. Nonetheless, when the Federal Home Loan Bank Board or the FSLIC must approve such a transaction, this amendment also provides that the approving agency must notify and consult with the FDIC about the merger. Thus, the FDIC has revised § 325.3(c)(4) as originally proposed, an action which coincidentally will remove what is now an apparent inconsistency between this section of the capital regulation as it is currently written and section 18(c) of the FDI Act, as amended.

Regulatory Flexibility Analysis—Paperwork Reduction Act

The amendments to Part 325 are not expected to have any significant impact on banks, including small banks.

To the extent that the provision on reservation of authority increases the flexibility of the FDIC in dealing with individual bank situations, all banks, including small banks, will benefit. In this regard, the FDIC is currently required by statute to consider bank capital in a number of situations. These include applications for deposit insurance, branching, mergers, and relocations of offices. In addition, under sections 8(a) and (b) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (a), (b)) the FDIC is charged with the responsibility of requiring corrective action when an insured bank is in an unsafe or unsound condition or when a state nonmember bank is operating in an unsafe or unsound manner. In addition, the International Lending Supervision Act (12 U.S.C. 3907(a)(1)) requires the FDIC to "cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate federal banking agency deems appropriate."

In carrying out its responsibilities the FDIC has always considered the capital adequacy of banks. However, it was not until late 1981 that the FDIC promulgated a written policy to inform banks and the public of its beliefs concerning capital and capital adequacy. 46 FR 62694 (1981). The capital maintenance regulation which the FDIC is amending became effective April 18, 1985. The FDIC's actual experience in implementing Part 325 since that time has revealed particular aspects of the regulation that are in need of clarification or further resolution. The amendments will better inform the banking industry and the public about the standards the FDIC uses in assessing capital adequacy and how the FDIC exercises its statutory duties with regard to the safety and soundness of banks in its consideration of capital adequacy.

The amendments do not duplicate, overlap, or conflict with any existing federal laws and regulations governing insured banks or with the FDIC's responsibilities pursuant to sections 6, 8, and 18 of the Federal Deposit Insurance Act (12 U.S.C. 1816, 1818, 1828).

The amendments neither alter any existing nor create any new recordkeeping or reporting requirements. Therefore, the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is not applicable.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Federal Deposit Insurance Corporation, Capital adequacy, State nonmember banks.

The FDIC hereby amends Part 325 of Title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

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

2. Paragraphs (a), (j), and (k) of § 325.2 are revised as follows:

§ 325.2 Definitions.

(a) *Assets classified loss.* The term "assets classified loss" means:

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

(2) When measured as of any other date, those assets (i) that have been determined (A) by an evaluation made by a state or federal bank examiner at the most recent examination of an insured bank to be a loss, or (B) by evaluations made by the insured bank since its most recent examination to be a loss, and (ii) that have not been charged off from the insured bank's books or collected.

* * * * *

(j) *Subordinated note or debenture.*[1] The term "subordinated note or debenture" means an obligation other than a deposit obligation that:

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

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

(3) States expressly that the obligation (i) is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors, and (ii) is ineligible as collateral for a loan by the issuing bank;

(4) Is unsecured;

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

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

(k) *Total assets.* The term "total assets" means the average of total assets required to be included in a banking institution's "Reports of Condition and Income" (Call Reports), as these reports may from time to time be revised, as of the most recent report date, plus the allowance for loan and lease losses, minus assets classified loss, and minus intangible assets other than mortgage servicing rights. The average of total assets is found in the

[1] This definition applies only to an obligation issued on or after December 2, 1987. An obligation issued before that date that satisfied the definition of the term "subordinated note and debenture" that was in effect prior to December 2, 1987 will continue to be included in secondary capital, subject to the limit set forth in § 325.2(i).

Call Report schedule of quarterly averages.

* * * * *

3. Paragraph (c)(4) of § 325.3 is revised as follows:

§ 325.3 Minimum capital requirement.

* * * * *

(c) * * *

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

* * * * *

4. Paragraph (c) of § 325.5 is revised as follows:

§ 325.5 Miscellaneous.

* * * * *

(c) *Reservation of authority.* Notwithstanding the definitions of "primary capital" and "secondary capital" in §§ 325.2(h) and 325.2(i), the Director of the Division of Bank Supervision may, if he finds a newly developed or modified capital instrument or a particular balance sheet entry or account to be the functional equivalent of a component of primary or secondary capital, permit one or more insured banks to include all or a portion of such instrument, entry, or account as primary or secondary capital, permanently or on a temporary basis, for purposes of this part. Similarly, the Director of the Division of Bank Supervision may, if he finds that a particular primary or secondary capital component or balance sheet entry or account has characteristics or terms that diminish its contribution to an insured bank's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from primary or secondary capital.

* * * * *

5. A new § 325.5(f) is added as follows:

§ 325.5 Miscellaneous.

* * * * *

(f) *Restrictions relating to capital components.* To qualify as primary or secondary capital, a capital instrument must not contain or be subject to any conditions, covenants, terms, restrictions, or provisions that are inconsistent with safe and sound banking practices.

6. New §§ 325.101 and 325.102 are added as follows:

§ 325.101 Optional redemption provision in a subordinated note or debenture.

This interpretive rule describes the effect of the presence of an optional redemption provision on the minimum maturity provision of a "subordinated note or debenture" as defined in § 325.2(j). An optional redemption ("call") provision exercisable by the issuing bank in less than seven years will not be deemed to constitute a maturity of less than seven years for the purposes of this part, provided:

(a) The obligation otherwise has a stated contractual maturity of at least seven years;

(b) The call is exercisable solely at the discretion or option of the issuing bank, and not at the discretion or option of the holder of the obligation; and

(c) The call is exercisable only with the express prior written consent of the FDIC under 12 U.S.C. 1828(i)(1) at the time early redemption or retirement is sought, and such consent has not been given in advance at the time of issuance of the obligation.

§ 325.102 Conditions and covenants inconsistent with safe and sound banking practices.

This interpretive rule provides examples of conditions, covenants, terms, restrictions, and provisions that a capital instrument must not contain or be subject to in order for the instrument to qualify as primary or secondary capital. These examples are not intended to be an exhaustive listing of such conditions and covenants; other conditions and covenants that are not expressly listed in this interpretive rule may be inconsistent with safe and sound banking practices. A condition, covenant, term, restriction, or provision is inconsistent with safe and sound banking practices if it:

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

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

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

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

By order of the Board of Directors. Dated at Washington, DC, this 27th day of October 1987.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-25330 Filed 10-30-87; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 86-ANE-33; Amdt. 39-5753]

Airworthiness Directive; Rolls-Royce (R-R) plc (formerly Rolls-Royce Limited) RB211-22B, -524, -524B, -524B2, -524B3, and -524C2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires modification of the low pressure turbine (LPT) stage 2 nozzle vane assemblies installed in certain R-R RB211 engines in accordance with the manufacturer's published instructions. The AD is needed to prevent an uncontained LPT stage 1 disk failure that can be caused by damage to the vane assembly.

DATES: *Effective*—December 11, 1987. *Compliance Schedule*—As prescribed in the body of this AD. *Incorporation by Reference*—Approved by the Director of the Federal Register as of December 11, 1987.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Rolls-Royce plc, Technical Publication Department, P.O. Box 31, Derby DE2 8BJ, England.

A copy of the SB is contained in Rules Docket Number 86-ANE-33, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal

Aviation Regulations (FAR) to include a new AD requiring modification of the LPT stage 2 nozzle vane assembly in accordance with the Accomplishment Instructions of R–R SB RB.211–72–8301, dated June 20, 1986, was published in the **Federal Register** on September 19, 1986 (51 FR 33277). The proposal was prompted by an uncontained LPT stage 1 disk failure in service. The failure of the LPT stage 1 disk was precipitated by a high pressure turbine (HPT) stage 1 blade failure that damaged the LPT stage 2 nozzle vanes sufficiently for the inner seal to pivot relative to the engine centerline. This condition resulted in severe rub and separation of the LPT stage 1 to 2 disk arm, allowing the LPT stage 1 disk to overspeed and fail.

Since this condition is likely to exist or develop in other engines of the same type design, the AD requires modification of the LPT stage 2 nozzle vane assembly in accordance with R–R SB RB.211–72–8301, Revision 2, dated March 27, 1987.

Interested persons have been afforded the opportunity to participate in the making of this amendment and due consideration has been given to all relevant data and comments received. Three responses were received concerning the proposed rule.

One commenter requested that the AD be changed to include only the engines listed in R–R SB RB.211–72–8301 since the RB211–524B4 and –524D4 engine models use a different type of LPT stage 2 vane assembly. The AD, by incorporating the Accomplishment Instructions of the SB, is limited to Part Numbers (P/N) LK63392, LK63331, and LK63333 LPT stage 2 vane assemblies. However, it was not readily apparent to the commenter, and the wording of the AD has been changed to clarify this.

The same commenter requested that the compliance requirement to modify assemblies at the next shop visit be deleted. The commenter made this request under the assumption that this requirement was based upon a uniform rate of modification throughout the compliance period. The FAA disagrees because deletion of this requirement, which is based on historical removal rate trends, would result in an unacceptable increase in the risk of failure.

The FAA has determined that the proposed wording which defines an LPT module shop visit was more restrictive than necessary. The wording in the AD has been changed to establish an LPT module shop visit which is constituted when the module visits the shop for rework due to its condition, or by a requirement for scheduled maintenance. Since this results in a more relaxed compliance schedule, no further notice is necessary.

A second commenter requested that (1) the compliance category of R–R SB RB.211–72–8301 should remain on a mandatory level, and (2) the compliance deadline be changed to December 31, 1989, if the SB is incorporated in an AD. In regard to the first request, the FAA can not respond because it has no jurisdiction over the compliance category established by the United Kingdom, Civil Aviation Authority (CAA). The commenter's second request is denied because it would cause an unacceptable increase in the risk of failure.

A third commenter requested that the compliance deadline be extended from June 30, 1989, to December 31, 1990. The commenter requested the extension based on the following information received from an operator:

(1) The operator uses directionally solidified (DS) HPT blades in his operation and has experienced no failures to date. The failed blade in service that caused the LPT disk rupture was not the DS type blade.

(2) Intermediate pressure turbine (IPT) blade failures in his operation have not caused a need for this modification.

(3) IPT vane and LPT blade and vane failures have not occurred in his operation.

The FAA disagrees. The potential for an uncontained failure of the LPT stage 1 disk is a function of the current design of the LPT stage 2 vane assembly. The probability of such a failure is associated with upstream failure of any engine component in the gas stream. Service experience to date indicates that many HPT blades, including DS type blades, have failed from many causes although only one such blade failure caused a disk failure. Service experience also indicates that there is a higher propensity to have a disk failure as a result of an IPT blade failure, even though none of the failures in service to date have resulted in damage to the LPT disk of that severity. Therefore, since it is possible to have an LPT stage 1 disk rupture as a result of any significant upstream blade or vane failure, and due to the hazardous nature of such a disk failure, the current compliance schedule is considered adequate.

After the FAA issued the notice of proposed rulemaking (NPRM), (51 FR 33277), which preceded this rule, R–R revised the SB with the approval of the CAA. R–R SB RB.211–72–8301, Revision 2, dated March 27, 1987, adds descriptive information to identify the various standards of existing stage 2 nozzle vane assemblies. Since more P/N's are now identified, the FAA will issue an NPRM that will propose to amend this AD to include all P/N's affected since that change is beyond the scope of this action.

Conclusion

The FAA has determined that this regulation involves approximately 428 RB211–22B and –524, –524B2, 524B3, 524C2 engines (domestic fleet) at an approximate total cost of 1.9 million dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this regulation affects only operators using Lockheed L–1011 series aircraft in which the RB211 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Rolls–Royce plc (formerly Rolls-Royce Limited): Applies to Rolls-Royce (R–R) RB211–22B, –524, –524B, –524B2, –524B3, and –524C2 turbofan engines

Compliance is required as indicated, unless already accomplished.

To prevent low pressure turbine (LPT) stage 1 disk uncontained failure, accomplish the following:

Modify LPT stage 2 nozzle vane assemblies Part Numbers LK63392, LK63331, and LK63333, in accordance with the

Accomplishment Instructions of R-R Service Bulletin (SB) RB.211-72-8301, Revision 2, dated March 27, 1987, at the next shop visit of the LPT module, but not later than June 30, 1989. **Note.**—For the purpose of this AD, an LPT module shop visit is defined as separation of the LPT rotor assembly from the LPT case/vane assembly as necessitated by (1) its condition or (2) a requirement for scheduled maintenance.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

R-R SB RB.211-72-8301, Revision 2, dated March 27, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Rolls-Royce plc, Technical Publication Department, P.O. Box 31, Derby DE2 8BJ, England. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86-ANE-33, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on December 11, 1987.

Issued in Burlington, Massachusetts, on October 7, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87-25260 Filed 10-30-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 87-NM-43-AD; Amdt. 39-5760]

Airworthiness Directives; SAAB Fairchild Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive, applicable to all SAAB Fairchild Model SF-340A series airplanes, which currently applies limitations to the operation of the cabin lighting system, to eliminate an unsafe condition created by the potential for electrical arcing. This action limits the applicability to specific airplanes and also provides for terminating action.

EFFECTIVE DATE: December 16, 1987.

ADDRESSES: The applicable service information may be obtained from SAAB Aircraft, Product Support, S-58188, Linkoping, Sweden. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend AD 85-25-54, Amendment 39-5359 (51 FR 25682; July 16, 1986), to limit the applicability to specific airplanes and provide for terminating action, was published in the **Federal Register** on July 2, 1987 (52 FR 25028).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 15 airplanes of U.S. registry will be affected by this AD. Since this amendment will only limit the number of affected airplanes, and provide an optional terminating action, it does not impose any additional monetary or regulatory burden on any operator.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because it imposes no additional burden. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By amending AD 85-25-54, Amendment 39-5359 (51 FR 25682; July 16, 1986), as follows:

A. Change the applicability statement to read:

SAAB-Fairchild: Applies to Model SF-340 airplanes, airliner version, listed in SAAB-SCANIA Service Bulletin SF340-33-016, Revision 1, dated April 3, 1987, certificated in any category.

B. Add a new paragraph D. that reads:

D. Installation of Modification 1422, as described in SAAB-SCANIA Service Bulletin SF340-33-016, Revision 1, dated April 3, 1987, constitutes terminating action for the requirements of paragraph A. of this AD.

This amendment becomes effective December 16, 1987.

Issued in Seattle, Washington, on October 22, 1987.

Mel Yoshikami,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-25261 Filed 10-30-87; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3, 4 and 140

Relief From Regulation as a Commodity Trading Advisor for Certain Persons; Relief From Compliance With Subpart B of Part 4 for Certain Commodity Pool Operators; Disclosure Documents and Annual Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (the "Commission") has adopted § 4.6, which excludes certain otherwise regulated persons, such as State-regulated

insurance companies, from the definition of the term "commodity trading advisor" ("CTA") and § 4.14(a)(8), which exempts certain other persons, such as registered investment advisers ("IAs"), from registration as a CTA. To implement this relief, the Commission has adopted certain other amendments to its regulations. The Commission also has adopted § 4.12(b), which provides relief from specific compliance with certain disclosure, reporting and recordkeeping requirements of Part 4 for registered commodity pool operators ("CPOs") who operate pools which, among other things, trade generally and routinely in securities instruments and who intend to commit no more than 10 percent of the fair market value of their pools' assets as initial margin or as option premiums for commodity interest trading. Finally, the Commission has adopted certain technical amendments to Part 4 regarding the Disclosure Document required of registered CPOs and CTAs and the Annual Report required of registered CPOs.

EFFECTIVE DATES: Sections 3.16(a)(3), 4.6, 4.12, 4.14(a)(8), 4.21(a)(17)(i), 4.21(g), that portion of § 4.22(c) which pertains to the number of Annual Report copies that must be filed, §§ 4.31(f) and 140.93(a)(1) and (a)(6) are effective November 2, 1987. That portion of § 4.22(c) which pertains to when the Annual Report must be distributed and filed will become effective December 2, 1987.

FOR FURTHER INFORMATION CONTACT: With respect to §§ 3.16, 4.6, 4.12, 4.14 and 140.93, Barbara S. Gold, Assistant Chief Counsel, and with respect to §§ 4.21, 4.22 and 4.31, Patricia N. Gillman, Senior Special Counsel, Division of Trading and Markets, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

The term "commodity trading advisor" is defined in section 2(a)(1)(A) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. 2 (1982), to mean:

> [A]ny person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing; but such term does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession * * *.

Section 4m(1) of the Act, 7 U.S.C. 6m(1) (1982), generally makes it unlawful for any person to engage in business as a CTA without being registered as such. Part 4 of the Commission's regulations, 17 CFR Part 4 (1987), governs the operations and activities of CTAs.[1]

In connection with the adoption of the Futures Trading Act of 1986, Pub. L. No. 99–641, 100 Stat. 3556 *et seq.* (1987), the House of Representatives Committee on Agriculture (the "Committee") considered a proposal to exclude certain persons from the CTA definition.[2] The Committee Report then noted the Commission's objections to the breadth of the proposal. It further noted the Commission's questioning of the need for a statutory amendment to the CTA definition in light of existing authority in section 2(a)(1)(A) of the Act,[3] and the Commission's prior responsiveness and stated preparedness to the requests of insurance companies regarding some of the problems that would have been addressed by the proposed amendment.

In light of the foregoing, the Committee declined to adopt the proposed amendment. Instead, the Committee urged the Commission to issue regulations in this regard. As the Committee Report states:

> The Committee believes that any insurance company subject to regulation by State insurance departments (including any wholly owned subsidiary or employee thereof), provided its commodity advisory activities are solely incidental to the conduct of the business of the insurance company as such, generally is not within the intent of the definition of the term "commodity trading [advisor]." The Committee similarly believes that any person who is excluded from the definition of the term "commodity pool operator" by Commission Rule 4.5 should be excluded from the commodity trading advisor definition, provided its commodity advisory activities are solely incidental to its operation of those trading vehicles for which Rule 4.5 provides relief. Relatedly, where the advisor advises an entity that is excluded from registration as a commodity pool under Rule 4.5 or is a Rule 4.5 qualifying entity and such advisor is subject to appropriate regulation under the Investment Advisers Act, that advisor should ordinarily be exempted from commodity trading advisor registration if its commodity advice is solely incidental to its business of providing securities advice to such entity and the advisor is not otherwise holding itself out as a commodity trading advisor. Therefore, the Committee urges the Commission to exercise its authority to adopt regulations in regard to these matters.
>
> Should the Commission determine that registration as a commodity trading advisor is required, the Committee expects that the Commission will use its existing authority to consider other appropriate relief. In this regard, the Committee is aware that the Commission has exercised its authority to limit, by exemption, those employees of otherwise regulated entities who must register as an associated person of a commodity trading advisor. The Committee further understands that the Commission has coordinated its activities with the Securities and Exchange Commission to eliminate duplicative requirements, for example, by deeming in appropriate cases compliance with SEC disclosure, recordkeeping, and reporting requirements as sufficient compliance with the Commission's corresponding commodity pool operator requirements. The Committee intends that the Commission will continue to provide this and such other relief as may be appropriate to applicants for registration as a commodity trading advisor or in any other registration category.
>
> On the other hand, the Committee does not expect the Commission to grant exempted commodity trading advisors any relief from the antifraud provisions of section 4*o* of the Act.

---

[1] Part 4 also governs the operations and activities of commodity pool operators ("CPOs"). For the purpose of this **Federal Register** release, references to a particular Part 4 regulation may be found at 17 CFR Part 4 (1987).

[2] H.R. Rep. No. 624, 99th Cong., 2d Sess. 46–48 (1986).

As interested persons will recall, in connection with the adoption of the Futures Trading Act of 1982, the Senate Committee on Agriculture, Nutrition and Forestry similarly considered a proposal to provide relief from CPO regulation for certain otherwise regulated persons. *See* S. Rep. No. 384, 97th Cong. 2d Sess. 79–80 (1982). Pursuant to the language in the Report of that Committee, the Commission adopted § 4.5, which makes an exclusion from the definition of the term "commodity pool operator" available to the "eligible persons" specified in the rule with respect to their operation of certain "qualifying entities." To claim that relief, generally a notice of eligibility, containing specified representations on how the qualifying entity will be operated, must be filed with the Commission. Section 4.5(c)(2). *See generally* 50 FR 15868 (April 23, 1985).

[3] As is stated above, section 2(a)(1)(A) provides the Commission with authority to exclude or exempt from the CTA definition "such [other] persons not within the intent of this definition as the Commission may specify by rule, regulation, or order."

The Committee understands that rulemaking addressing these concerns may take some time for the Commission to develop and promulgate. Individual requests for exclusions or exemptions, consistent with the above guidelines, however, should be processed by the Commission as expeditiously as practicable. The Commission's experience with individual cases should facilitate the formulation of more general rulemaking. H.R. Rep. No. 624, 99th Cong., 2d Sess. 47–48 (1986).

In response to this language, on May 26, 1987 the Commission published for comment in the **Federal Register** proposed § 4.6, which would have excluded certain otherwise regulated persons, such as State-regulated insurance companies, from the CTA definition and proposed § 4.14(a)(8), which would have exempted certain other persons, such as registered investment advisers, from CTA registration.[4] By that **Federal Register** release the Commission further proposed certain revisions to its rules for CPOs and CTAs which also generally would have had the effect of reducing regulatory burdens. Specifically, the Commission proposed to adopt in § 4.12(b) relief from specific compliance with certain disclosure, reporting and recordkeeping requirements of Part 4 for registered CPOs of certain pools and to reduce to two from three the number of certain documents that CPOs and CTAs are required to file under Part 4.

The Commission received 11 comment letters on these proposals: 1 from a person registered as both a CTA and as an investment adviser; 3 from persons registered as an investment adviser; 1 from a national bank; 2 from persons registered as a futures commission merchant; 1 from a commodity exchange; 2 from trade associations; and 1 from a law firm.

The Commission's careful review of those comment letters indicates that they uniformly supported the Commission's proposals.[5] Accordingly, with the exception of § 4.12(b), these proposals have been adopted essentially as they had been proposed.[6]

[4] 52 FR 19522.

[5] Certain commenters urged the Commission to provide even broader relief. The specific remarks of those commenters and the Commission's responses thereto are set forth in the discussion of the particular rule to which they apply.

[6] As is discussed more fully below, proposed § 4.12(b) would have required a CPO to request the relief available thereunder *and* the Commission to act upon that request. As adopted, § 4.12(b) does not require any such action upon the part of the Commission. Rather, the relief available thereunder is effective upon the filing of a claim of exemption with the Commission.

Further, because these proposals have been adopted essentially as they had been proposed, the Commission is repeating in this **Federal Register** release much of the discussion contained in the proposing **Federal Register** release.

II. Relief from CTA Regulation

A. Section 4.6: Exclusion for Certain Otherwise Regulated Persons from the Definition of the Term "Commodity Trading Advisor"

Paragraph (a) of the rule specifies the persons who are eligible for exclusion from the CTA definition and the activities for which such relief is available. As it stated in the preamble to the proposed rule, the Commission has strictly followed the Committee Report language in specifying these persons and activities. Thus, the rule provides relief for: (1) A State-regulated insurance company, or any wholly-owned subsidiary or employee thereof, and (2) a person who is excluded from the definition of the term "commodity pool operator" by § 4.5 under certain circumstances.[7] In particular, the commodity interest advisory activities of these persons are subject to a "solely incidental" test—*i.e.*, in the case of an insurance company (or wholly-owned subsidiary or employee thereof) those activities must be "solely incidental to the conduct of the insurance business of the insurance company as such" and in the case of a person excluded from the CPO definition by § 4.5 those activities must be "solely incidental to its operation of those trading vehicles for which § 4.5 provides relief." [8]

Paragraph (b) of the rule requires each person claiming an exclusion from the CTA definition to submit to special calls to demonstrate its compliance with the terms of paragraph (a).[9] This provision is intended to permit the Commission to monitor whether persons claiming the exclusion are properly entitled to do so. Paragraph (c) provides that an exclusion under the rule will cease to be effective "upon any change which would render the person claiming the exclusion ineligible under paragraph (a)."

Section 4.6 follows the format of § 4.5 with one significant exception.[10] The

[7] Section 4.5(a) specifies the persons eligible for that relief as follows:

(1) An investment company registered as such under the Investment Company Act of 1940;

(2) An insurance company subject to regulation by any State;

(3) A bank, trust company or any other such financial depository institution subject to regulation by any State or the United States; and

(4) A trustee or named fiduciary of a pension plan that is subject to Title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That for purposes of this § 4.5 the following pension plans shall not be construed to be pools:

(i) A noncontributory plan, whether defined benefit or defined contribution, covered under Title I of the Employee Retirement Income Security Act of 1974;

(ii) A contributory defined benefit plan covered under Title IV of the Employee Retirement Income Security Act of 1974; *Provided, however,* That with respect to any such plan to which an employee may voluntarily contribute, no portion of an employee's contribution is committed as margin or premiums for futures or options contracts; and

(iii) A plan defined as a governmental plan in section 3(32) of Title I of the Employee Retirement Income Security Act of 1974.

[8] Section 4.5(b) lists the following trading vehicles as qualifying entities:

(1) With respect to any person specified in paragraph (a)(1) of this section, an investment company registered as such under the Investment Company Act of 1940;

(2) With respect to any person specified in paragraph (a)(2) of this section, a separate account established and maintained or offered by an insurance company pursuant to the laws of any State or territory of the United States, under which income gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account, without regard to other income, gains, or losses of the insurance company;

(3) With respect to any person specified in paragraph (a)(3) of this section, the assets of any trust, custodial account or other separate unit of investment for which it is acting as a fiduciary and for which it is vested with investment authority; and

(4) With respect to any person specified in paragraph (a)(4) of this section, and subject to the proviso thereof, a pension plan that is subject to Title I of the Employee Retirement Income Security Act of 1974 * * *.

Moreover, where necessary, before it provides such advice to any such qualifying entity, the person must file a notice of eligibility. (As is stated in n. 7, *supra*, certain trading vehicles are deemed under § 4.5(a)(4)(i)–(iii) to be "non-pools" and, thus, no notice is required to be filed with respect to their operation.)

[9] In the absence of any negative comments, the Commission also has adopted as proposed § 140.93(a)(6), which delegates to the Director of the Division of Trading and Markets, or the Director's designee, the authority to make such special calls. The Division of Trading and Markets is responsible for, among other things, administering and interpreting the Part 4 regulations.

[10] Thus, interested persons should note that the Commission intends to interpret the special call provision in § 4.6(b) and in § 4.5(c)(2)(v) in an identical manner. With respect to the latter provision the Commission has stated:

[I]t does not intend to administer the special call representation in any * * * burdensome or onerous manner. Rather, the Commission intends that the information it would require pursuant to a special call basically would be information that the qualifying entity's other Federal or State regulator would already be requiring it to keep—*e.g.*, data concerning the execution dates, execution prices and current values of its cash market and commodity interest positions. Moreover, as is now expressly stated in the rule, a special call would be strictly limited to documenting compliance with the information and representations on operating criteria that the notice of eligibility must contain. Therefore, the Commission believes that compliance with a special call should pose little, if any, inconvenience or disruption to the conduct of the entity's operations. 50 FR 15868 at 15880.

CTA exclusionary rule, unlike the CPO exclusionary rule, does not require that a notice be filed with the Commission to claim the exclusion.[11] The Commission did not propose a notice requirement because

(1) With respect to insurance companies, pursuant to the Committee Report the proposal follows the exclusionary language in section 2(a)(1)(A) for such persons as banks (who do not have to file any notice), and (2) with respect to those persons who are excluded under § 4.5 from the CPO definition, the Commission will, in fact, be receiving an identifying notice under that rule. 52 FR 19522 at 19524.

The Commission nonetheless sought comment on whether a notice should be required to be filed to claim relief under § 4.6 and, if so, what information the notice should contain.[12] The several persons responding to this request agreed with the Commission, stating that a notice requirement would be unnecessary or redundant. Accordingly, the Commission has not adopted a notice requirement in the final rule. The exclusion provided by § 4.6 is available without any action on the part of a person claiming that relief—subject, of course, to the person meeting the requirements of paragraph (a).

As is noted above, the one criterion to which persons claiming relief under § 4.6 are subject is that their commodity interest advisory activities must be "solely incidental" to their insurance business or § 4.5 activities. As the Commission noted in proposing this criterion, pursuant to the Committee Report language, Commission staff had received and responded to several requests for interpretation on the meaning of the "solely incidental" criterion in the context of the activities of State-regulated insurance companies and their wholly-owned subsidiaries.[13] Specifically, it noted that staff had found that this condition of the exclusion would be met where commodity interest trading advice would be provided—

to persons to whom [the insurance company] (or a subsidiary insurance company) has issued a[n] * * * insurance contract and, thus, with whom [the insurance company] (or a subsidiary insurance company) has established a relationship through the issuance of that contract.[14]

Conversely, staff had found that this condition would not be met where—certain State-regulated insurance companies (or a wholly-owned subsidiary thereof) have established and serve as the registered investment adviser to a mutual fund complex into which persons who are not policyholders of the insurance company and who have no other relationship with the company may invest.[15]

As for the other persons excluded from the CTA definition by § 4.6, the Commission expressed its belief that the requirement that the excluded person's advisory activities be "solely incidental" to certain other activities could only be met where such a person served as the operator of the § 4.5 trading vehicle *and* provided securities investment advise to it and commodity interst advice consistent with strategies permitted under § 4.5.[16]

No specific comments were received concerning how to further articulate this standard. Accordingly, as it stated in its proposal, the Commission expects to interpret the "solely incidental" condition flexibly following prior interpretations and to further delineate the words "solely incidental" based on specific fact situations.

The Commission did, however, receive various comments on proposed § 4.6 concerning the evolving nature of the definition of the term "bona fide hedging transactions and positions" in § 1.3(z)(1), 17 CFR 1.3(z)(1) (1987).[17] As one commenter urged, because § 4.6 would be available to persons excluded from the CPO definition by §4.5, in adopting § 4.6 the Commission should verify that the scope of activities under § 4.5 may be refined. In that way, the commenter stated, § 4.5 would flexibly accommodate evolving regulatory enhancements without having to be amended and revised. The Commission agrees with the recommendation and by this **Federal Register** release acknowledges its intention to apply any such evolving definitions of the term "bona fide hedging" to §§ 4.5 and 4.6.[18]

B. Section 4.14(a)(8): Exemption for Certain Persons from Registration as a CTA

Section 4.14(a) is that section of the Commission's regulations which contains the provisions pursuant to which a person who comes within the statutory definition of the term" commodity trading advisor" my nonethless claim exemption from registration as a CTA. In furtherance of the Committee Report, the Commission proposed and has adopted certain other CTA registration exemptions in § 4.14(a)(8).[19]

Preliminarily, the Commission notes that section 4m(1) of the Act provides a statutory exemption from CTA registration for any CTA "who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor." In response to comments received, the Commission wishes to make clear that the relief provided by §4.14(a)(8) is mutually exclusive from that provided by section 4m(1)—that is, depending on the nature of its activities a CTA may be exempt from registration as such under either or both provisions. Thus, the fact that a CTA who is claiming exemption under § 4.14(a)(8) has more than 15 clients for the purpose of that rule will not affect the CTA's ability to claim exemption under section 4m(1) for a different set of clients—*i.e.*, clients who are other than § 4.5 trading vehicles.

Like § 4.6, § 4.14(a)(8) similarly closely follows the language of the Committee Report in specifying the persons who are eligible for relief thereunder—*e.g.*, persons who are registered as in IA under the Investment Advisers Act of 1940 (the "IAA"), 15 U.S.C. 80b *et seq.* (1982). In addition, the Commission also has made § 4.14(a)(8) available to persons who are excluded from the definition of the term "investment adviser" by sections 202(a)(2) and 202(a)(11) of the IAA [20]—essentially certain banks of the nature described in those sections. As the Commission noted in its proposal, without such a

[11] *See* paragraphs (c) through (f) of § 4.5.

[12] *Cf.* § 4.14(a)(8), which requires the persons eligible under that section to file a notice of exemption to claim relief from registration as a CTA. As is explained below, such a notice would be needed to identify those persons—who otherwise would not be known to the Commission.

[13] *See, e.g.*, Division of Trading and Markets Interpretative Letter No. 86–24, Comm. Fut. L. Rep. (CCH) ¶23,292 (Oct. 1, 1986).

[14] *Id.* at p. 32,798.

[15] Division of Trading and Markets Interpretative Letter No. 86–18, Comm. Fut. L. Rep. (CCH) ¶23,201 (July 23, 1986) at p. 32,531, n. 6. As is discussed below, however, the Commission has adopted in § 4.14(a)(8) an exemption from registration as a CTA for persons who are registered as an IA and who provide commodity interest trading advice to § 4.5 trading vehicles. *See also* Interpretative Letter No. 86–24, n. 13, *supra*, at p. 32,800.

[16] *Cf.* Division of Trading and Markets Interpretative Letter No. 87–1, Comm. Fut. L. Rep. (CCH) ¶23,623 (May 19, 1987), wherein staff found that certain of an insurance company/IA's commodity interest advisory activities would not be "solely incidental," and thus would not come within the scope of the Committee Report language, because those activities would not be given in the context either of an insurance product or a primary securities relationship.

[17] *See, e.g., Clarification of Certain Aspects of the Hedging Definition*, 52 FR 27195 (July 20, 1987); *but cf. Risk Management Exemptions from Speculative Position Limits Approved under Commission Regulation 1.61*, 52 FR 34633 (Sept. 14, 1987) at 34634, n. 3.

[18] Similar comments were received with respect to proposed § 4.14(a)(8) which, as is discussed more fully below, provides an exemption from CTA registration for certain persons who, among other things, provide commodity interest trading advice to § 4.5(b) trading vehicles. The Commission similarly intends to apply any such evolving definitions to § 4.14(a)(8).

[19] The Commission similarly proposed and has adopted an amendment § 3.16(a)(3) of its regulations, to provide an exemption from registration for the associated persons ("APs") of these exempt CTAs.

[20] 15 U.S.C. 80b-2(a)(2) and 2(a)(11) (1982).

provision, those banks— because of the very fact that they statutorily are excluded from the IA definition—would be ineligible for the relief that persons who must register as an IA could claim.[21]

Further similar to § 4.6, the criteria for relief under § 4.14(a)(8) closely follows the Committee Report language. Specifically, the criteria that a person who seeks to claim exemption from CTA registration under § 4.14(a)(8) must meet were proposed and have been been adopted as follows:

(i) The persons's commodity trading advice:

(A) Is directed solely to, and for the sole use of, entities which are excluded from the definition of the term "pool" under § 4.5 or are qualifying entities under § 4.5 for which a notice of eligibility has been filed;

(B) Is solely incidental to its business of providing securities advice to each such entity; and

(C) Employs only such strategies as are consistent with eligiblity status under § 4.5.

(ii) The person is not otherwise holding itself out as a commodity trading advisor * * *.

As the Commission similarly noted in proposing § 4.14(a)(8), pursuant to the Committee Report staff also had occasion to interpret the exemption criteria of the Report.[22] As staff stated:

As for the * * * condition * * * that [no registered IA] will otherwise hold itself out as a CTA with respect to those activities for which a "no-action" position from CTA registration has been issued herein * * * we believe that further discussion is necessary and appropriate to ensure compliance with that condition. In this regard, you asserted that [a registered IA] "should, however, be allowed to describe to existing and potential clients the limited commodities advice it may provide in accordance with the terms of this letter and how it believes that such advice may be used to benefit its clients"—which, you noted, would parallel the disclosures the Commission has said would be appropriate for the purpose of the "marketing" representation under Rule 4.5. *See* 50 Fed. Reg. 15868 at 15879, [April 23, 1985]. We further note that in discussing this representation the Commission stated that it—

intends the term "marketing" to include oral, written and electronic promotional materials and that an entity would be "marketing participations" in a manner inconsistent with the required representation if [a trading vehicle] was actively promoted as "a hybrid—*e.g.*, a securities *and* a commodities—trading vehicle or as an investment vehicle in which commodity futures and options trading was particularly significant and critical to the growth of its assets, as opposed to being incidental to protecting those assets against a decline in value." *Id.*

Thus, the marketing materials to be used should state, with respect to transactions in commodity interests, only that strategies consistent with eligibility status under Rule 4.5 may be used. These strategies may, of course, be described in the marketing materials. Further in this regard, we believe that [the IA]: (1) should market its ability to manage an actual or prospective client's securities portfolio, not a comodity interest trading vehicle; and (2) should not represent that it has any unique expertise or ability in providing commodity interest trading advice.[23]

As it stated in its proposal, absent comment that would indicate otherwise, the Commission intended to interpret this criteria of § 4.14(a)(8) in accord with the foregoing staff position. The Commission further noted that the foregoing position was not intended to be an all inclusive discussion but, rather, an attempt to identify activities which would be consistent—or inconsistent—with the Committee Report.

The Commission received several comments on the proposed criteria. One commenter recommended deletion of the "solely incidental" criterion—*i.e.*, that the exemption in § 4.14(a)(8) should be available where an IA only provides commodity interest trading advice to § 4.5 trading vehicles and only employs trading strategies consistent with eligibility status under § 4.5.

The Commission disagrees with this recommendation. Because it would provide relief for persons who are acting *solely* as CTAs (of § 4.5 clients), we do not believe that such activity would be consistent with the Committee Report.[24]

Certain other commenters urged the Commission to broaden the scope of permissible advisees under § 4.14(a) (8). One person suggested expanding the scope to include certain so-called "institutional investors"—*e.g.*, endowments, foundations, corporations and partnerships with certain minimum assets. In response, the Commission notes that while the IAA may afford certain rights and remedies to these investors, there has been no showing that these investors *themselves* are in fact "otherwise regulated" on the State or Federal level. Accordingly, the Commission is declining at this time to specifically broaden the scope of permissible advisees under the rule but, instead, intends to continue to provide relief as appropriate in individual cases.[25] The Commission thus intends to continue to intepret the criteria of § 4.14(a)(8) in accord with the foregoing staff position and, as it gains more experience in this area, to identify such other activities as are consistent with the Committee Report.

The Commission also proposed to require that a notice of exemption, containing certain specified information, be filed with the Commission to claim the relief available under the rule and that a supplemental notice be filed in the event of changed circumstances—*i.e.*, registration as a CTA. Sections 4.14(a) (8) (iii) and (iv).[26] In addition, to ensure the proper administration of § 4.14(a)(8), the Commission also proposed that any such notice would be required to be filed with the National Futures Association, which has responsibility for registering CTAs. Section 4.14(a) (8) (v).[27] Several persons specifically addressed the Commission's request for comment on these proposals. They generally questioned whether such requirements would be necessary. In response, the Commission repeats the explanation in its proposal that such a requirement is in fact necessary because

---

[21] *See* Division of Trading and Markets Interpretative Letter No. 86-31, Comm. Fut. L. Rep. (CCH) ¶23,416 (Dec. 11, 1986), wherein staff stated that, based upon the facts at issue, it would not recommend that the Commission take any enforcement action for failure to register as a CTA against a bank that provided "outside" advisory services to a § 4.5 registered investment company. *Cf.* § 4.6, which provides an exclusion from the CTA definition for the bank if the bank is an eligible person under § 4.5(a)(3) and the trading vehicle is a qualifying entity under § 4.5(b)(3).

[22] *See* Interpretative Letter No. 86-24, n. 13, *supra*. In that letter staff also stated that, based upon the facts at issue, it would not recommend that the Commission take any enforcement action for failure to register as a CTA against certain registered IAs—*i.e.*, the insurance company and certain of its wholly-owned subsidiaries.

[23] *Id.* at pp. 32,800-01.

Upon request the Division subsequently clarified its position as follows:

[W]e wish to emphasize that for a registered investment adviser to be exempt from CTA registration under the House Committee Report language it must, among other things, provide commodity interest trading advice to a trading vehicle specified in Rule 4.5 in a manner solely incidental to its business of providing securities advice to the trading vehicle—regardless of whether that vehicle is a "non-pool" under Rule 4.5(a)(4)(i), (ii) or (iii) or a "qualifying entity" under Rule 4.5(b). Division of Trading and Markets letter dated Nov. 19, 1986.

[24] The Commission previously has provided in this **Federal Register** release its reasons for not adopting such a notice requirement in § 4.6.

[25] Pursuant to section 17 of the Act, 7 U.S.C. 21 (1982), the Commission has designated the NFA as a registered futures association with responsibility for the regulation of persons who are required to be registered with the Commission—*e.g.*, CTAs and CPOs. *See* NFA Bylaw 1101. *See also*, NFA Compliance Rule 2-13, which provides in pertinent part that "[a]ny Member who violates any of CFTC Regulations 4.1 and 4.16 through 4.41 shall be deemed to have violated an NFA requirement." Thus, a requirement that any notice filed under § 4.14(a) (8) must be filed with the NFA is necessary to ensure that this designated self-regulatory organization is timely apprised of the activities or persons who are acting as a CTA—and persons who have qualified under § 4.14(a)(8) for exemption from CTA registration.

the securities investment advisory profesionals who could claim relief under the rule are not otherwise known to the Commission. Thus, the purpose of this notice requirement, which is patterned after that contained in § 4.5, is to enable the Commission to know the identities of those persons claiming relief under § 4.14(a)(8) and to monitor their compliance with the criteria of the rule.[28]

One commenter stated that the burden of filing a notice would be wholly inconsistent with the underlying concept of providing exemption in the first place. The Commission believes, however, that the benefits both to it and to affected persons far outweigh any burden that the preparation of a mere notice of exemption would impose upon them. This is particularly true in light of the fact that while the notice must be filed before a person first intends to engage in business as a CTA, it is effective upon filing. Section 4.14(a)(8)(iii). Accordingly, the Commission has adopted the notice provision as proposed.

As is noted above, § 4.14(a)(8) is effective today upon its publication in the **Federal Register**. In this regard, the Commission recognizes that pending the completion of its rulemaking proceeding, there may have been uncertainty on the part of affected CTAs as to whether, and under what criteria, they would be eligible to claim the relief from registration as a CTA under the final rule. In fact, to alleviate that uncertainty the Commission stated in the **Federal Register** release accompanying proposed § 4.14(a)(8) that it would not take enforcement action solely for failure to register as a CTA against any person who met the criteria of the proposed rule.[29] Thus, because of their uncertainty and the Commission's "no-action" position, these CTAs may be engaging in activities for which they now would be eligible for regulatory relief under § 4.14(a)(8) as adopted without having filed a notice of exemption with the Commission. In light of the foregoing, and subject to compliance with all of the other provisions of § 4.14(a)(8), the Commission has determined that it will not take enforcement action solely for failure to register as a CTA against any such person who files a claim of exemption as is specified in § 4.14(a)(8) within 60 days from the date hereof.[30]

C. The Effects of the Rules

In General. Section 4.6 provides an *exclusion* for certain persons from the definition of the term "commodity trading advisor." The Commission wishes to emphasize, however, that while these persons may be outside the CTA definition, they still are "persons" for the purposes of the Act and the Commission's regulations thereunder. Thus, they remain subject to, among other things, Section 4b of the Act, 7 U.S.C. 6b (1982), which generally prohibits fraudulent transactions, and Part 18 of the regulations, 17 CFR Part 18 (1987), which requires certain reports to be furnished by traders in the commodity interest markets.

Section 4.14(a)(8) provides an *exemption* for certain other persons from CTA registration. Thus, these other persons continue to be both "persons" and CTAs for the purposes of the Act and the regulations. In addition to section 4b and Part 18 they remain subject to all other provisions which concern CTAs regardless of their registration status—*e.g.*, section 4*o* of the Act, 7 U.S.C. 6*o* (1982), which specifically prohibits fraudulent transactions by any CTA (or CPO, or any AP thereof) § 4.30, which prohibits any CTA from accepting in its own name funds intended to secure commodity interest positions, and § 4.41, which prescribes certain advertising standards for all CTAs.

On Disclosure Document Past Performance. A person who qualifies for relief under § 4.6 or § 4.14(a)(8) may at a late date decide to engage in activities which require registration as a CTA and, accordingly, for which it in fact registers as such.[31] As a registered CTA that person will be required under § 4.31 to distribute to prospective managed account clients a Disclosure Document containing the past performance record of the commodity interest accounts traded by the CTA (and each of its principals) for the three years preceding the date of the Document. In light of the comments received and its own deliberations, the Commission believes that the information required under § 4.31(a)(3) does not need to include the record of the accounts traded by a person (or principal thereof) pursuant to an exclusion from the CTA definition under § 4.6. This is because the person was not within the CTA definition with respect to those accounts. It further believes that whether that information needs to include the record of the accounts traded by a person (or principal thereof) pursuant to an exemption from CTA registration under § 4.14(a)(8) remains to be determined on a case-by-case basis in the context of a particular fact situation.

III. Section 4.12(b): Relief from Subpart B of Part 4 for Certain Registered CPOs

The Commission proposed that its general authority to exempt "any person or any class or classes of persons" from Part 4 would be retained in § 4.12(a) and that specific authority to exempt certain CPOs from certain provisions of Subpart B of Part 4—that is, from certain of the disclosure, reporting and recordkeeping requirements of §§ 4.21, 4.22 and 4.23, respectively—would be contained in § 4.12(b).[32] In light of very favorable comments, the Commission has adopted these proposals, with certain modifications to the mechanics of § 4.12(b) as are discussed more fully below.

Preliminary and as it stated in the preamble accompanying its proposal, the Commission wishes to emphasize that in adopting § 4.12(b) it has not intended to set forth the sole basis for granting relief from Subpart B of Part 4. Rather, the Commission's intention is to codify in a rule those situations for which it has routinely granted relief and with which it has become most familiar and, thus, for which it is best equipped to adopt a specific rule.[33] All other requests for exemption from Subpart B—and from any other provision of Part 4—will continue to be eligible for consideration under § 4.12(a) on a case-by-case basis.[34]

---

[28] Section 4.14(a) also contains various provisions which exempt certain other commodity professionals from registration as a CTA. It should be noted that by their very terms those provisions refer to persons who have been identified to the Commission—either through registration (as other than a CTA) (§§ 4.14(a) (3), (4), (6) and (7)) or through the filing of a notice of exemption from CPO registration (§ 4.14(a) (5)).

[29] 52 FR 19522 at 19526. By that release the Commission adopted a similar "no-action" position with respect to persons who met the criteria of proposed § 4.6.

[30] Similarly, the Commission will not take enforcement action solely for failure to register as an AP of a CTA against any person who is associated with a CTA who files a claim of exemption as is specified in § 4.14(a)(8) within 60 days from the date hereof.

[31] *See* § 4.14(a)(8)(iv), which requires that a person who has filed a notice of exemption from CTA registration must supplement the notice in the event the person subsequently registers as a CTA.

[32] This action also was in furtherance of the Committee Report, which, as is stated above, acknowledged the actions that had been taken in this area and expressed the intention "that the Commission will continue to provide this and such other relief."

[33] In this regard, the Commission wishes to clarify that the adoption of § 4.12(b) will not affect any similar exemptions it has previously issued. Conversely, any CPO who has received such an exemption with respect to a commodity pool it operates is now required to comply with § 4.12(b) with respect to any other pools for which it desires to receive similar relief.

[34] *See* § 140.93(a)(1), 17 CFR 140.93(a)(1) (1987), whereby the Commission delegated its authority

Continued

As proposed and as adopted, § 4.12(b) also follows the format of § 4.5. Thus, paragraph (1) of the rule sets forth the pesons who are eligible for relief—*i.e.*, any person who is registered as a CPO or who has applied for such registration—and the criteria pursuant to which their commodity pools must be operated. Briefly stated, any such pool for which a registered CPO seeks to claim relief under § 4.12(b) is required: (1) To be offered and sold in compliance with the Securities Act of 1933 (the "33 Act"), 15 U.S.C. 77a *et seq.* (Supp. III 1985), or an exemption from that Act; (2) to be generally and routinely engaged in securities transactions; (3) to restrict to 10 percent of the fair market value of its assets the amount it may commit to initiate its commodity interest transactions; and (4) to trade commodity interests in a manner soley incidental to its securities trading activities—*i.e.*, that commodity interest trading is not an integral part of the pool's trading strategy and that the pool's trading strategy can, in fact, be accomplished without the use of commodity interests. Section 4.12(b)(1)(i)(A)-(D).[35] Moreover, the CPO must provide written notice to its existing and prospective participants of the restrictions on the pool's commodity interest trading prior to the date the pool commences trading commodity interests. Section 4.12(b)(1)(ii).[36]

One person commented on the criteria proposed for § 4.12(b)(1). It expressed the view that the term "in a manner solely incidental to its securities activities" was a subjective criterion and therefore an inappropriate criterion for an exemptive rule. It further thought the criterion unnecessary in light of the other criteria of the rule. In response, the Commission wishes to make clear that the intent of the "solely incidental" criterion is not to preclude an operator who desires that its fund is exposed to the commodity interest markets through the commitment of a relatively small amount of assets—*i.e.*, 10%—from claiming relief under § 4.12(b). Rather, the criterion is intended to ensure that § 4.12(b) is not available where commodity interest trading is a critical component of the fund's trading—*e.g.*, where by its very terms the fund's trading program requires that a specified percentage of the fund's assets must at all times be committed to commodity interest trading or where, because the fund's other assets are held in debt securities solely for the purpose of generating interest income, commodity interest trading is, in fact, the only trading in which the fund engages.[37]

The relief that is available under § 4.12(b) is set forth in paragraph (2).[38] First, in the case of § 4.21(a), that the Commission accept in lieu and in satisfaction of the Disclosure Document specified by that section an offering memorandum as described in the proposal § 4.12(b)(2)(i). Specifically, such an offering memorandum is not required to include the past performance records of the pool's CPO and CTA nor the Risk Disclosure and Cautionary Statements.[39] The Memorandum is, however, required to be prepared in compliance with the '33 Act (or with an exemption therefrom) and to include the other information required by § 4.21(a). As the Commission explained in its proposal, the term "responds" as used in the rule is intended to clarify that the specific negative disclosures which otherwise would be required by § 4.21(a) do not need to be made.[40] Moreover, the term "responds" is intended to acknowledge the disclosure requirements of the '33 Act (or exemption therefrom) and to further clarify that for the purpose of § 4.12(b) the Commission intends that those requirements will control the specific content of the disclosures made in the Memorandum.[41] Second, in the case of § 4.22 (a) through (e), that the Commission accept in lieu and in satisfaction of the Account Statement and Annual Report required by those sections the financial reports specified in the rule. Sections 4.12(b)(2) (ii) and (iii), respectively. With respect to the Account Statement, these financial reports are a statement which indicates the net asset value of the pool as of the end of the reporting period and the change in net asset value from the end of the previous reporting period—which must be prepared and distributed at least quarterly. As the Commission explained in its proposal, the term "net asset value" refers to the total operations of the pool and the term "indicates" means that this information may be presented in either narrative or tabular format. With respect to the Annual Report, these financial reports must include, at a minimum, a Statement of Financial Condition as of the close of the pool's fiscal year and a Statement of Income (Loss) for that year. These statements are required to be prepared according to generally accepted accounting principles and to be certified by an independent public accountant. Moreover, these substitute financial reports continue to be subject to all of the other requirements of the rules to which they pertain.[42] Third, and last, in the case of § 4.23 (a)(10) and (a)(11), to exempt the CPO from the requirements of those sections to respectively make and keep Statements of Financial Condition and of Income (Loss) for the pool § 4.12(b)(iv).[43] The Commission proposed and has adopted this relief because these Statements would otherwise provide specific supporting data for the Account Statement—from which, as is discussed above, an exemption has been adopted. As it stated in its proposal, the Commission believes that the data necessary to verify the financial reports which may substitute for the Account Statement

---

under (former) § 4.12 to the Director of the Division of Trading and Markets, or the Director's designee.

Similarly, the Commission previously has stated in connection with its adoption of revisions to the Part 4 rules that:

The Commission recognizes that in the past its staff has issued interpretations of the Part 4 rules. Consistent with that practice, the Commission invites interested persons to seek such staff interpretations of § 4.10(d) [, which defines the term "pool",] and of all the other Part 4 rules. 46 FR 26004 at 26006 (May 8, 1981).

[35] *Cf.* § 4.5(c)(2)(i), which requires a qualifying entity to trade commodity interests for hedging purposes within § 1.3(z)(1) or, with respect to certain long strategies, for incidental purposes where the underlying commodity value of its long contracts at all times will not exceed the sum of certain specified items.

[36] This notice is subject to the recordkeeping requirements of § 4.23.

[37] While acknowledging that its proposal was outside the scope of the Commission's proposed rulemaking, another commenter suggested that the Commission adopt a complete exemption from Subpart B for "accredited investors only-hedge funds" which met the criteria of § 4.12(b)(1). ("Hedge funds" were defined by the commenter to mean investment funds exempt from registration under the Investment Company Act of 1940 due to being privately sold to not more than 100 investors.) In response, the Commission repeats its prior statement that the relief it has adopted is for those situations for which it has become most familiar and, thus, for which it is best equipped to adopt a specific rule. The situations of which the commenter spoke will continue to be eligible for consideration under § 4.12(a) on a case-by-case basis.

[38] It should be noted that a CPO may request any or all of the relief available under the rule.

[39] This information would otherwise be required by §§ 4.21 (a)(4), (a)(5), (a)(17) and (a)(18), respectively.

[40] *See* §§ 4.21 (a)(3), (a)(6), (a)(8), (a)(10), (a)(13) and (a)(15). For example, under the rule an offering memorandum would respond to the requirements of § 4.21(a)(13) if it disclosed information on certain litigation concerning certain persons associated with the pool. Unlike the Disclosure Document specified by § 4.21(a), then, the memorandum is not also subject to the requirement that "if there has been no such action against any of the foregoing persons the pool operator must make a statement to that effect with respect to each such person."

[41] The applicable provisions of § 4.21(a) will, however, continue to control the subject matter of the disclosures that are required to be made.

[42] For example, they continue to be subject to the oath or affirmation requirement of § 4.22(h).

[43] Unlike the other documents subject to the rule, the books and records required under these sections are not required to be filed with the Commission. Thus, the Commission does not "accept" them.

generally should be available from the other books and records the CPO is required to keep.[44]

As proposed, the rule contemplated that the CPO would request exemption under § 4.12(b) and that the Commission specifically would grant (or deny) such relief. The one commenter on these proposed mechanics of the rule urged the Commission to make the relief available under § 4.12(b) effective upon the filing of a notice with the Commission—which would parallel the mechanism for effectiveness of relief under §§ 4.5 and 4.14(a)(8). The Commission agrees with this suggestion, and has incorporated it into the rule. Accordingly, any registered CPO who desires to claim the relief available under § 4.12(b) must file a claim of exemption with the Commission containing certain specified information, along with a copy to the NFA. Section 4.21(b)(3).[45] The claim of exemption, which must be filed before the date the commodity pool first enters into a commodity interest transaction, is effective upon filing. Section 4.21(b)(4).[46]

The Commission's proposal also would have required certain continuing obligations on the part of a CPO to whom relief had been granted under § 4.12(b)—namely, that the CPO would have had to attach a copy of the order granting such relief to each Disclosure Document and Annual Report that it filed with the Commission. In light of the revised mechanics of the rule, as are discussed above, the Commission instead has adopted a requirement that the CPO must make a statement on the cover page of the Disclosure Document or Annual Report that it is required to file with the Commission to the effect that a claim of exemption under § 4.12(b) has been made with respect to that document. Section 4.12(b)(5).[47] The Commission wishes to clarify that any Disclosure Document filed pursuant to § 4.12(b) is subject to the 21-day "pre-filing" requirement of § 4.21(g). Consistent with the purpose and the very terms of the exemption, however, and with its previous interpretation above of the term "responds," the Commission emphasizes its intent that any staff review of any such Document will be limited to ensuring general compliance with § 4.21 (a)(1) through (a)(3) and (a)(6) through (a)(16). *See* § 4.12(b)(2)(i)(B).

As proposed and as adopted, the final provision of the rule makes clear the extent of an exemption claimed under § 4.12(b)—*i.e.*, that it is effective only with respect to the pool for which relief has been claimed and, further, that it does not affect the applicability of any other provisions of Part 4, the Act or the Commission's regulations with respect to that pool and any other pool the pool operator operates or intends to operate. Section 4.12(b)(6).

IV. Technical Amendments to §§ 4.21, 4.22 and 4.31

A. Section 4.21(a)(17): The Risk Disclosure Statement

Section 4.21 requires each registered CPO to distribute and to file with the Commission a Disclosure Document containing specified information. (Rule 4.31 places a similar requirement on certain registered CTAs.[48]

Section 4.21(a)(17)(i) also requires the Risk Disclosure Statement to appear by itself on the first page of the Disclosure Document. As it explained in its proposal, however, the Commission recognized that certain CPOs also must comply with requirements imposed by such other regulatory authorities as the NFA[49] and the Securities and Exchange Commission ("SEC")[50]. Accordingly, the Commission proposed to amend § 4.21(a)(17)(i) to clarify existing Commission policy that the Statement must appear by itself on the page immediately following any disclosures which otherwise are mandated by the Commission or NFA to appear on the cover of the Document, or immediately following any disclosures explicitly required in the forepart of a securities prospectus pursuant to applicable securities laws. As the Commission further explained, this proposal was supported by the history of the Part 4 regulations, which encouraged accommodation between Commission and SEC regulations in this area. For example, in adopting Part 4 in 1979, the Commission noted that "[i]n those cases where a CPO chooses to provide [an SEC] prospectus to prospective pool participants, the Commission will permit that prospectus to be supplemented to comply with the specific requirements of 4.21."[51]

Consistent with this language, in reviewing CPO Disclosure Documents since the adoption of Part 4, Commission staff had not objected to placing the Risk Disclosure Statement behind cover page material required by other regulators. Recently, however, staff had received a number of inquiries seeking a formal statement of the Commission's position. Accordingly, the Commission also proposed an amendment to end any confusion in this area.

The one person who specifically commented on these amendments strongly supported them. Accordingly, the Commission had adopted this amendment as proposed.

B. Section 4.22(c): The Annual Report

Section 4.22(c) requires each registered CPO to distribute and file an Annual Report for each pool that it operates within 90 calendar days after the end of the pool's fiscal year. As the Commission stated in proposing its amendment to § 4.22(c):

> One of the purposes of the Annual Report requirement is to enable pool participants to receive financial information in a timely manner.
>
> However, under the current rule, this purpose is defeated in cases where the pool stops trading before the end of its fiscal year. Accordingly, the proposal would require that the Report be distributed and filed within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event later than 90 days after funds are returned to pool participants. Permanent cessation of trading would be determined by reference to objective indications such as, but not limited to, the date notice is sent to pool participants advising that the pool has ceased trading or the date the CPO states in writing to the Commission, National Futures Association ("NFA") or other party that the pool has ceased operation. In any event, the Annual Report would be required to be filed with the Commission and distributed to pool participants no later than 90 days after funds are returned to the participants. As a result of this proposal, a participant would never have to wait more than 90 days from the end of the pool's operation to receive his final Annual Report. 52 FR 19522 at 19528.

In the absence of any negative comments, the Commission has adopted as proposed the amendment to § 4.22(c) to clarify when the Annual Report must

---

[44] *See, e.g.*, § 4.23 (a)(6) and (a)(8), which respectively require the CPO to make and keep a general ledger and "all other records" generated for the pool.

[45] The Commission previously has explained in n. 27, *supra*, why it is necessary to send a copy of the claim to the NFA.

[46] Accordingly, the Commission has amended § 140.93(a)(1) such that it now applies to any general request for exemption under § 4.12(a).

[47] This requirement is intended to ensure that the Commission is informed under all circumstances of those CPOs who have claimed relief under § 4.12(b) and the documents for which they have claimed such relief. Accordingly, the CPO may—but is not required—to include such a statement on any Disclosure Document or Annual Report that it provides to the participants in its pool.

[48] Specifically, those registered CTAs who seek to direct or to guide client accounts are subject to § 4.31.

[49] *See e.g.*, NFA Guideline for the Disclosure by CPOs and CTAs of "Up Front" Fees and Organizational and Offering Expenses, NFA Manual ¶10,067.

[50] *See e.g.*, regulation S-K, items 501, 502 and 503, 17 CFR § 229.501-.503 (1987).

[51] 44 FR 1918 at 1922 (Jan. 8, 1979).

be filed if a pool permanently ceases operations before the end of a pool's fiscal year.

C. Sections 4.21(g), 4.22(c) and 4.31(f): Numbers of Copies of Documents to be Filed

In light of generally favorable comments, the Commission has adopted as proposed amendments to §§ 4.21(g) and 4.31(f) which reduce to two from three the number of copies of the Disclosure Document that a CPO or a CTA must file with the Commission. Likewise, § 4.22(c) has been amended as proposed to require that only two copies of the Annual Report be filed with the Commission.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq. (1982), requires that agencies, in proposing rules, consider the impact of those rules on small business. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[52]

As the Commission noted in the preamble to the proposed rules, these definitions do not address the persons set forth In proposed §§ 4.6 and 4.14(a)(8) because, by the very nature of those proposals, the operations and activities of such persons generally are regulated by Federal and State authorities other than the Commission.[53] Assuming, *arguendo*, that such persons and entities would be "small entities" for purposes of the RFA, the Commission expressed its belief that proposed §§ 4.6 and 4.14(a)(8) would not have a significant economic impact on them because it merely would require in the case of the former rule certain information upon special call and in the case of the latter rule the filing of a notice with the Commission, the documentation for either of which should be pre-existing. Moreover, the proposals would relieve these persons from the requirement to register as a CTA and from the disclosure and recordkeeping requirements applicable to registered CTAs.[54]

As for those proposals which addressed registered CPOs,[55] the Commission previously had determined that registered CPOs are not small entities for the purpose of the FRA.[56] Thus, no economic analysis of these proposals as they relate to registered CPOs was required.[57]

As for the proposals which addressed registered CTAs,[58] the Commission had stated that it was more appropriate to consider on a case-by-case basis which CTAs should be deemed small under the RFA.[59] However, since the proposal would have reduced an existing burden on those registered CTAs to which it would apply, the Commission expressed its belief the proposal would not have a significant economic impact on any of those CTAs—regardless of whether any such CTA would be a small entity for the purpose of the RFA.

In certifying, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that these proposed rules would not have a significant economic impact on a substantial number of small entities, the Commission nonetheless invited comments from any CTA or CPO which believed that these proposed rules would have such an impact on its operations. No such comments were received.

B. Section 15 of the Act

Section 15 of the Act, 7 U.S.C. 19 (1982), requires the Commission to—

> Take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation.

The Commission has taken into consideration the public interest to be proteted by the antitrust laws and has endeavored to take the least anti-competitive means of achieving the regulatory objectives of the Act. To the extent the rules adopted herein raise competitive concerns, the Commission has determined that such rules are necessary and appropriate. This is particularly true in light of the nature and extent of regulatory relief available under §§ 4.6, 4.12(b) and 4.14(a)(8) to the persons and with respect to the activities specified therein. As for other persons and activities, the Commission notes that, as is discussed above, while it closely has followed the Committee Report in adopting these rules it intends that staff will continue to issue exemptions and interpretations under Part 4—such that, under appropriate circumstances, relief from CTA or CPO regulation may be afforded to other persons who engage in activities not covered by these rules.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with these conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with that Act the Commission previously submitted these rules in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules on July 15, 1987 and assigned OMB control number 3038–0023 Part 3 and 3038–0005 to Part 4.

Copies of the OMB approved information collection package associated with these rules may be obtained from Bob Neal, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

D. Effective Dates

The Administrative Procedure Act generally requires that rules promulgated by an agency may not be made effective less than 30 days after publication except for, among other things, "a substantive rule which grants or recognizes an exemption or relieves a restriction" or "or for good cause." Insasmuch as §§ 4.6 and 4.14(a)(8) and the amendments to §§ 3.16(a)(3), 4.12, 4.21(a)(17), 4.21(g), that portion of § 4.22(c) which pertains to the number of copies of the Annual Report which must be filed and § 4.31(f) come within the first exception, the Commission is making these rules effective upon the date of publication of this **Federal Register** release. As is explained more fully above, however, by this **Federal Register** release the Commission also, in effect, is providing a 60 day "no-action" period for person to file the requisite notice of exemption necessary to claim the relief available under § 4.14(a)(8). Since the amendments to § 140.93(a)(1) and (a)(6) necessarily flow from the

---

[52] 47 FR 18618–18621 (April 30, 1982).

[53] For example, § 4.6 applies to, among other persons, "an insurance company subject to regulation by any State" and § 4.14(a)(8) applies to IAs who are registered with, and subject to the supervision of, the SEC.

[54] 52 FR 19522 at 19528. Section 3.16(a)(3) exempts from registration as an AP of a CTA an AP of a person exempt under § 4.14(a)(8). An AP must be an individual: *See* Section 4k of the Act, 7 U.S.C. 6k (1982). Because the RFA does not apply to "individuals," no economic analysis of proposed § 3.16(a)(3) was required.

[55] *See* proposed § 4.12(b) and the proposed revisions to §§ 4.21(a)(17)(i), 4.21(g) and 4.22(c).

[56] 47 FR 18619–20.

[57] As the Commission further noted, those proposals would not have imposed any new requirements on registered CPOs. In fact, certain of the proposals would have relieved existing requirements. *See, e.g.*, §§ 4.12(b) and 4.21(g).

[58] *See* the proposed revision to § 4.31(f).

[59] 47 FR 18620.

adoption of §§ 4.12 and 4.6, respectively, the Commission finds that good cause exists similarly to make these rules effective upon publication. The amendment to § 4.22(c) which pertains to when the Annual Report must be distributed and filed does not come within any such exception and, accordingly, it is to be effective 30 days after publication.

List of Subjects

17 CFR Part 3

Registration, Associated persons, Commodity futures.

17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Commodity futures.

17 CFR Part 140

Authority delegation (Government agencies), Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4k, 4*l*, 4m, 4n, 4*o*, and 8a, 7 U.S.C. 2, 6k, 6*l*, 6m, 6n, 6*o*, and 12a and in 5 U.S.C. 552 and 552b (1982), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6*i*, 6k, 6m, 6n, 6*o*, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

2. Section 3.16(a)(3) is revised to read as follows:

§ 3.16 Registration of associated persons of commodity trading advisors and commodity pool operators.

(a) * * *

(3) Is exempt from registration as a commodity trading advisor pursuant to the provisions of § 4.14(a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or is associated with a person who is so exempt from registration: *Provided,* That the provisions of this paragraph (a)(3) shall not apply to the solicitation of a client's or prospective client's discretionary account, or the supervision of any person or persons so engaged, by, for, on behalf of a commodity trading advisor (i) which is not exempt from registration pursuant to the provisions of § 4.14(a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or (ii) which is registered as a commodity trading advisor notwithstanding the availability of that exemption;

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a, and 23; 5 U.S.C. 552 and 552b.

4. Section 4.6 is added to read as follows:

§ 4.6 Exclusion for certain otherwise regulated persons from the definition of the term "commodity trading advisor."

(a) Subject to compliance with the provisions of this section, the following persons, and any principal or employee thereof, shall be excluded from the definition of the term "commodity trading advisor:"

(1) An insurance company subject to regulation by any State, or any wholly-owned subsidiary or employee thereof; *Provided, however,* That its commodity interest advisory activities are solely incidental to the conduct of the insurance business of the insurance company as such; and

(2) A person who is excluded from the definition of the term "commodity pool operator" by § 4.5; *Provided, however,* That:

(i) Its commodity interest advisory activities are solely incidental to its operation of those trading vehicles for which § 4.5 provides relief; and

(ii) Where necessary, prior to providing any commodity interest trading advice to any such trading vehicle the person files a notice of eligibility as specified in § 4.5 to claim the relief available under that section.

(b) Any person who has claimed an exclusion under this § 4.6 must submit to such special calls as the Commission may make to require the person to demonstrate compliance with the provisions of paragraph (a) of this section.

(c) An exclusion claimed under this § 4.6 shall cease to be effective upon any change which would render the person claiming the exclusion ineligible under paragraph (a) of this section.

5. Section 4.12 is revised to read as follows:

§ 4.12 Exemption from provisions of Part 4.

(a) *In general.* (1) The Commission may exempt any person or any class or classes of persons from any provision of this Part 4 if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought.

(2) The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

(b) *Exemption from Subpart B for certain commodity pool operators.* (1) Any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (b)(2) of this section if:

(i) The pool for which it makes such claim:

(A) Will be offered and sold pursuant to the Securities Act of 1933 or pursuant to an exemption from said Act;

(B) Will generally and routinely engage in the buying and selling of securities and securities derived instruments;

(C) Will not enter into commodity futures and commodity options contracts for which the aggregate initial margin and premiums exceed 10 percent of the fair market value of the pool's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided, however,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) may be excluded in computing such 10 percent; and

(D) Will trade such commodity interests in a manner solely incidental to its securities trading activities.

(ii) Each existing participant and prospective participant in the pool for which it makes such request is informed in writing of the restrictions set forth in § 4.12(b)(1)(i) (C) and (D) prior to the date the pool commences trading commodity interests. The pool operator may furnish this information by way of the pool's Disclosure Document, Account Statement, a separate notice or other similar means.

(2) The commodity pool operator of a pool which meets the criteria of paragraph (b)(1) of this section may claim the following relief:

(i) In the case of § 4.21(a), that the Commission accept in lieu and in satisfaction of the Disclosure Document specified by that section an offering memorandum for the pool which does not contain the information required by § 4.21 (a)(4), (a)(5), (a)(17) and (a)(18); *Provided, however,* That the offering memorandum:

(A) Is prepared pursuant to the requirements of the Securities Act of 1933 or the exemption from said Act pursuant to which the pool is being offered and sold; and

(B) Responds to the information requirements of § 4.21 (a)(1) through (a)(3) and (a)(6) through (a)(16).

(ii) In the case of § 4.22 (a) and (b), that the Commission accept in lieu and in satisfaction of the Account Statement and prescribed frequency respectively specified by those sections a statement which indicates the net asset value of the pool as of the end of the reporting period and the change in net asset value from the end of the previous reporting period, to be prepared and distributed no less frequently than quarterly; *Provided, however,* That each such statement complies with the other requirements of § 4.22 (a) and (b), including the references in those sections to § 4.22 (g) and (h).

(iii) In the case of § 4.22 (c) through (e), that the Commission accept in lieu and in satisfaction of the financial information and statements in the Annual Report specified by those sections an annual report for the pool which contains, at a minimum, a Statement of Financial Condition as of the close of the pool's fiscal year and a Statement of Income (Loss) for that year; *Provided, however,* That:

(A) Each such annual report complies with the other requirements of § 4.22(c), including the reference in that section to § 4.22(h) and the requirement in § 4.22(c)(5) that the annual report must contain appropriate footnote disclosure and further material information; and

(B) The financial statements in such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be certified by an independent public accountant.

(iv) In the case of § 4.23 (a)(10) and (a)(11), to exempt the pool operator from the requirements of those sections with respect to the pool.

(3) Any registered commodity pool operator who desires to claim the relief available under this § 4.12(b) must file a claim of exemption with the Commission. Such claim must:

(i) Be in writing;

(ii) Provide the name, main business address and main business telephone number of the registered commodity pool operator, or applicant for such registration, making the request;

(iii) Provide the name of the commodity pool for which the request is being made;

(iv) Contain representations that the pool will be operated in compliance with § 4.12(b)(1)(i) and the pool operator will comply with the requirements of § 4.12(b)(1)(ii);

(v) Specify the relief sought under § 4.12(b)(2);

(vi) Be signed by the pool operator, as follows: If the pool operator is a sole proprietorship, the request must be signed by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer; and

(vii) Be filed, along with a copy, with the Commission at the address specified in § 4.2.

(viii) A copy also must be filed with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

(4)(i) The claim of exemption must be filed before the date the commodity pool first enters into a commodity interest transaction.

(ii) The claim of exemption shall be effective upon filing; *Provided, however,* That any exemption claimed hereunder shall cease to be effective upon any change which would render the representations made pursuant to paragraph (b)(3)(iv) of this section inaccurate or the continuation of such representations false or misleading.

(5)(i) If a claim of exemption has been made with respect to § 4.12(b)(2)(i), the commodity pool operator must make a statement to that effect on the cover page of each offering memorandum, or amendment thereto, that it is required to file with the Commission pursuant to § 4.21(g).

(ii) If a claim of exemption has been made with respect to § 4.12(b)(2)(iii), the pool operator must make a statement to that effect on the cover page of each annual report that it is required to file with the Commission pursuant to § 4.22(c).

(6)(i) Any claim of exemption effective hereunder shall be effective only with respect to the pool for which it has been made.

(ii) The effectiveness of such claim shall not affect the obligations of the commodity pool operator to comply with all other applicable provisions of this Part 4, the Act and the Commission's rules and regulations issued thereunder with respect to the pool and any other pool the pool operator operates or intends to operate.

6. Section 4.14 is amended by adding paragraph (a)(8) to read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

(a) * * *

(8) It is registered as an investment adviser under the Investment Advisers Act of 1940 or is excluded from the definition of the term "investment adviser" pursuant to the provisions of sections 202(a)(2) and 202(a)(11) of that Act; *Provided, however,* That:

(i) The person's commodity interest trading advice:

(A) Is directed solely to, and for the sole use of, entities which are excluded from the definition of the term "pool" under § 4.5 or are qualifying entities under § 4.5 for which a notice of eligibility has been filed;

(B) Is solely incidental to its business or providing securities advice to each such entity; and

(C) Employs only such strategies as are consistent with eligibility status under § 4.5.

(ii) The person is not otherwise holding itself out as a commodity trading advisor; and

(iii) Prior to the date upon which such person intends to engage in business as a commodity trading advisor, the person files a notice of exemption with the Commission.

(A) The notice must provide the name, main business address and main business telephone number of the person filing the notice.

(B) The notice must represent that the person qualified for exemption under this § 4.14(a)(8) and that it will comply with the criteria of this section.

(C) The notice shall be effective upon filing; *Provided, however,* That an exemption claimed hereunder shall cease to be effective upon any change which would render the representations made pursuant to paragraph (a)(8)(iii)(B) of this section inaccurate or the continuation of such representations false or misleading.

(iv) In the event a person who has filed a notice of exemption under this § 4.14(a)(8) subsequently becomes registered as a commodity trading advisory, the person must file a supplemental notice of that fact.

(v) Any notice required to be filed hereunder must be:

(A) In writing;

(B) Signed by a duly authorized representative; and

(C) Filed, along with a copy, with the Commission at the address specified in § 4.2.

(D) A copy also must be filed with the National Futures Association at its headquarters office (ATTN: Director of Compliance, Compliance Department).

* * * * *

7. Section 4.21 is amended by revising paragraphs (a)(17)(i) introductory text and (g) to read as follows:

§ 4.21 Disclosure to prospective pool participants.

(a) * * *

(17)(i) The following Risk Disclosure Statement, to be prominently disclosed on, and as the only language on, the

page immediately following any disclosures required to appear on the cover page as provided by the Commission or any registered futures association, or immediately following the disclosures explicitly required in the forepart of a securities prospectus pursuant to any regulations promulgated under applicable securities laws.

* * * * *

(g)(1) The commodity pool operator must file with the Commission two copies of the Disclosure Document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver the Document to a prospective participant in the pool.

(2) The commodity pool operator must file with the Commission two copies of all subsequent amendments to the Disclosure Document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

8. Section 4.22 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 4.22 Reporting to pool participants.

* * * * *

(c) Each commodity pool operator registered or required to be registered under the Act must distribute an Annual Report to each participant in each pool that it operates, and must file two copies of the Report with the Commission, within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event longer than 90 days after funds are returned to pool participants; *Provided, however,* that if during any calendar year the commodity pool operator did not operate a commodity pool, the pool operator must so notify the Commission within 30 calendar days after the end of such calendar year. * * *

* * * * *

9. Section 4.31 is amended by revising paragraph (f) to read as follows:

§ 4.31 Disclosure to prospective clients.

* * * * *

(f)(1) The commodity trading advisor must file with the Commission two copies of the Disclosure Document for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to give the Document to a prospective client in the trading program.

(2) The commodity trading advisor must file with the Commission two copies of all subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

* * * * *

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

10. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a(c), 4a(j), 6, 6c, 6d, 6e, 6f, 6g, 6k, 6*l*, 6m, 6n, 6p, 7, 7a, 8, 8a, 12, 12a, 18 and 23; 5 U.S.C. 552 and 552b.

11. Section 140.93(a) is amended by revising paragraph (a)(1) and by adding paragraph (a)(6) to read as follows:

§ 140.93 Delegation of authority to the Director of the Division of Trading and Markets.

(a) * * *

(1) All functions reserved to the Commission in § 4.12(a) of this chapter.

* * * * *

(6) All functions reserved to the Commission in § 4.6(b) of this chapter.

* * * * *

Issued in Washington, DC on October 27, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-25280 Filed 10-30-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to certification of true copies and use of the Department seal to add to the list of delegates the Director and Deputy Director and the Freedom of Information Officers of the Office of Standards and Regulations, Center for Devices and Radiological Health (CDRH).

The additional authority is being delegated because the CDRH Freedom of Information function is located in the Office of Standards and Regulations.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Melissa H. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville. MD 20857, 301-443 4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.22 *Certification of true copies and use of the Department seal* (21 CFR 5.22) to add to the list of delegates the Director and Deputy Director and the Freedom of Information Officers of the Office of Standards and Regulations, CDRH. The additional authority is being delegated because the CDRH Freedom of Information function is located in the Office of Standards and Regulations.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 et seq.; 21 U.S.C. 41 et seq., 61-63, 141 et seq., 301-392, 467f(b), 679(b), 801 et seq., 823(f), 1031 et seq.; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u et seq., 1395y and 1395y note, 3246(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921.

2. In § 5.22 by adding new paragraphs (a)(9) (v) and (vi) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(9) * * *

(v) The Director and Deputy Director, Office of Standards and Regulations, CDRH.

(vi) Freedom of Information Officers, Office of Standards and Regulations, CDRH.

* * * * *

Dated: October 26, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-25275 Filed 10-30-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 175

[Docket No. 86F-0515]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-(diiodomethylsulfonyl) toluene for use as a preservative in can-sealing cements which contact food. This action responds to a petition filed by Abbott Laboratories.

DATES: Effective November 2, 1987; objections by December 2, 1987.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1987 (52 FR 3350), FDA announced that a petition (FAP 6B3961) had been filed by Abbott Laboratories, Abbott Park, IL 60064, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) of the food additive regulations be amended to provide for the safe use of 4-(diiodomethylsulfonyl) toluene for use as a preservative in can end and can side seam cements contacting food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 175.300(b)(3)(xxxii) should be amended as set forth below. This listing of the additive will provide for its use in both can end and can side seam cements contacting food.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before December 2, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.300 is amended in paragraph (b)(3)(xxxii) by alphabetically inserting a new item in the list of substances to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxii) * * *

4-(Diiodomethysulfonyl) toluene (CAS Reg. No. 20018-09-1) for use as a preservative at a level not to exceed 0.3 percent by weight in can-sealing cements.

* * * * *

Dated: October 22, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-25276 Filed 10-30-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

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

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for CEVA Laboratories, Inc.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: CEVA Laboratories, Inc., 7101 College Blvd., Suite 610, Overland Park, KS 66210, the sponsor of several NADA's, has advised FDA of a change of address from "10560 Barkley, Overland Park, KS 66212." The agency is amending the address entry in 21 CFR 510.600 in paragraph (c)(1) for "CEVA Laboratories, Inc.," and in paragraph (c)(2) for "050604" to reflect this change of address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling,

Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "CEVA Laboratories, Inc.," and in paragraph (c)(2) in the entry for "050604" by revising the sponsor address to read "7101 College Blvd., Suite 610, Overland Park, KS 66210."

Dated: October 26, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-25273 Filed 10-30-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc., providing for the use of Type C lasalocid feeds for the control of coccidiosis in cattle having a body weight of up to 800 pounds.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110, is the sponsor of NADA 96-298, which provides for the use of Type C lasalocid feeds for the control of coccidiosis caused by *Eimeria bovis* and *Eimeria zuernii* in cattle having a body weight of up to 800 pounds. The drug is provided at 1 milligram of lasalocid per 2.2 pounds body weight. Based on data and information submitted, the supplemental NADA is approved and 21 CFR 558.311 is amended by revising paragraph (b)(3) and adding new paragraph (e)(1)(xiii). The basis for approval is discussed in the freedom of information summary.

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.311 is amended in paragraph (b)(3) by revising the phrase "(e)(1) (vi), (vii), (ix), (xi) and (xii)" to read "(e)(1) (vi), (vii), (ix), (xi), (xii), and (xiii)" and by adding new paragraph (e)(1)(xiii), to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(xiii)	.....	Cattle; for control of coccidiosis caused by *Eimeria bovis* and *Eimeria zuernii*.	For cattle; feed continuously at a rate of 1 mg of lasalocid per 2.2 pounds body weight per day to cattle weighing up to 800 pounds with a maximum of 360 mg of lasalocid per head per day.	000004

* * * * *

Dated: October 23, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-25274 Filed 10-30-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-87-1362; FR-2426]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on certain section 232 (Mortgage Insurance for Nursing Homes) loans and on all section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: October 22, 1987.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been raised from 10.50 percent to 11.00 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (December 15, 1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*l*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental 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.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: health, Loan programs: housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.00 percent per annum with respect to mortgages insured on or after October 22, 1987.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.00 percent per annum with respect to mortgages insured on or after October 22, 1987.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 11.00 percent per annum with respect to mortgages insured after October 22, 1987.

* * * * *

Date: October 20, 1987.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-25281 Filed 10-30-87; 8:45 am]

BILLING CODE 4210-27-M

---

24 CFR Part 885

[Docket No. R-87-1363; FR-2427]

Loans for Housing for the Elderly or Handicapped; Fiscal Year 1988 Interest Rate

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of section 202 Loan Interest Rate—Fiscal Year 1988.

SUMMARY: This document established 9 percent per annum as the interest rate for loans that are made during Fiscal Year 1988 for housing for the elderly or handicapped under section 202 of the Housing Act of 1959.

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, 451 Seventh Street, SW., Room 6116, Washington, DC 20410-8000, telephone (202) 426-8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Under 24 CFR 885.410(g)(2), the Secretary of Housing and Urban Development is required to publish an annual document establishing the interest rate for loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959. This interest rate may not exceed either:

(1) A rate determined by the Secretary of the Treasury to be the average interest rate on all interest-bearing obligations of the United States then forming a part of the public debt computed at the end of the fiscal year immediately prior to the date on which the loan is made, plus an allowance to cover administrative costs and probable losses under the program. (This

allowance has been determined by the Secretary of Housing and Urban Development to be one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods); or

(2) Any statutory ceiling on interest rates or allowances for administrative costs and probable losses for such loans as may be applicable. (24 CFR 885.410(g)(1).)

The interest rate on the described interest-bearing obligations of the United States at the end of Fiscal Year 1986 (as determined by the Secretary of the Treasury) was 8.75 percent annum. This rate plus the .25 percent per annum allowance for administrative costs and probable losses yields an interest rate of 9 percent per annum. Accordingly, this document announces that the Secretary of HUD has established the interest rate for section 202 loans made during Fiscal Year 1988 at the rate of 9 percent per annum.

Under 24 CFR 50.20(1) an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters that are categorically excluded from the environmental requirements of 24 CFR Part 50.

Authority: Sec. 202, Housing Act of 1959, U.S.C. 1701q; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 353(d).

Date: October 27, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-25318 Filed 10-30-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 358

[Department of the Treasury Circular, Public Debt Series No. 28-87]

Regulations Governing CUBES (Coupons Under Book-Entry Safekeeping)

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Interim rule.

SUMMARY: This interim rule establishes regulations governing the Treasury's Coupons Under Book-Entry Safekeeping ("CUBES") program. This program was the subject of a Notice published on December 5, 1986 (51 FR 44003). This Notice stated that the CUBES program would provide a one-time opportunity to present physical coupons detached from U.S. Treasury obligations, i.e., bonds and notes, for conversion to book-entry form, to be held in an off-line book-entry system maintained and administered by the Federal Reserve Bank of New York, as fiscal agent of the United States. The terms and conditions governing the CUBES program were set out in a written agreement signed by participating depository institutions. These regulations modify the CUBES program, as originally set forth in the written agreements, to provide a more efficient method of maintenance and transfer of CUBES. CUBES may now be traded on-line and against payment, and depository institutions will maintain their CUBES accounts at the Federal Reserve Bank or Branch of their district. These regulations provide that the general regulations governing transactions in book-entry Treasury securities will govern transactions in CUBES.

DATES: Interim rule effective November 2, 1987; comments must be received on or before December 2, 1987.

ADDRESS: Send comments to the Washington Office, Office of the Chief Counsel, Bureau of the Public Debt, Engraving and Printing Annex, Washington, DC 20239-0001.

FOR FURTHER INFORMATION CONTACT: Rochelle F. Granat, Attorney-Adviser, Bureau of the Public Debt, Washington, DC, (202) 447-9859.

SUPPLEMENTARY INFORMATION: In the Notice published December 5, 1986, at 51 FR 44003, the Bureau of the Public Debt announced the implementation of a Coupons Under Book-Entry Safekeeping (CUBES) program. Under the program, depository institutions holding coupons stripped from physical Treasury securities were permitted to convert them to book-entry form by presenting them, between January 5, 1987, and April 30, 1987, pursuant to instructions provided by the Federal Reserve Bank of New York and the Department of the Treasury.

All depository institutions which participated in the conversion process were required to sign an "Agreement to the Terms and Conditions Governing CUBES." Appendix A contains the terms of the agreement. Depository institutions which did not participate in the conversion phase of the CUBES program but subsequently participated in the trading of off-line CUBES were required to sign a modified agreement which contained only those terms governing post-conversion transactions.

Under the original terms and conditions of the CUBES program, CUBES accounts were to be maintained in an off-line system at the Federal Reserve Bank of New York. The program offered off-line trading of CUBES between depository institutions. Transfers between accounts required that written or "tested" telephonic instructions be sent to the Federal Reserve Bank of New York through the Federal Reserve Bank or Branch in whose district the depository institution was located. Payments associated with transfers of CUBES had to be settled outside of the book-entry system. Transfers of CUBES were subject to the Treasury fee schedule applicable to the transfer of other off-line book-entry securities.

These regulations modify the CUBES program to provide a more efficient method of account maintenance and transfer. Section 358.2 allows each depository institution holding or receiving CUBES accounts to maintain them at the Federal Reserve Bank or Branch in the district in which it is located. Depository institutions will be able to effect transfers of CUBES nationwide, on-line, and against payment. This means that a depository institution with on-line connections to its Federal Reserve Bank or Branch can initiate and receive transfers of CUBES directly and need not provide instructions to the Reserve Bank or Branch. In addition, on-line depository institutions will be assessed the on-line book-entry transfer fee per origination instead of the higher off-line fee for each origination and receipt.

The one-time transfer of CUBES account balances to the Federal Reserve Bank or Branch of the district in which the depository institution is located will be subject to the same terms and conditions as applied to off-line transfers of CUBES in the original agreement, except that no fee will be charged for this transfer. All subsequent transfers of CUBES will be subject to the same rules and regulations as all other commercial book-entry Treasury securities.

Each depository institution holding CUBES accounts prior to implementation of this modification has been informed of the planned modification to the CUBES program. Because the securities wire cannot accommodate par amounts of less than one dollar, each institution has agreed in writing to waive all amounts of less than one dollar in the aggregate for each CUBES CUSIP and has stated its intention to authorize the transfer of its CUBES balances to the Federal Reserve Bank or Branch of its district.

These regulations, as stated in § 358.0(b), therefore, modify the terms and conditions provided in the written

agreement to the extent inconsistent therewith. All other terms remain in full force and effect. In addition, the regulations clearly establish, at § 358.3, that the general regulations governing transactions in book-entry Treasury securities govern transactions in CUBES (31 CFR Part 306, Subpart O). CUBES will be included within the definition of "security" for purposes of Subparts A, B, and D of Part 357 of Title 31, at such time as the Treasury/Reserve Automated Debt Entry System (TRADES) regulations are published as a final rule.

The Department has determined that the publication of these CUBES regulations is appropriate at this time because it is no longer practical to have the agreement serve as the primary source for reference to the terms and conditions governing transactions in CUBES and to require each new participant in the program to execute the written agreement. These regulations are, therefore, issued to provide easily-referenced terms and conditions, binding on all present and future holders of CUBES, and to establish that CUBES may be held and transferred in the same manner, and subject to the same general regulations, as all other commercial book-entry Treasury securities.

Procedural Requirements

This interim rule is not a "major rule" as defined in Executive Order 12291. A regulatory impact analysis is therefore not required.

The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). Moreover, the current participants in the CUBES program have been informed of the modification to the CUBES program and have agreed in writing to the waiver of the amounts which cannot be accommodated on the securities wire. Once CUBES accounts are transferred to the Federal Reserve Banks or Branches of the districts in which the depository institutions are located, transactions in CUBES will take place in the same manner and be subject to the same regulations as all other commercial book-entry Treasury securities. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*,) do not apply. Therefore, the Department finds that notice and public procedures are not necessary.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*,) does not apply to this rule because it does not contain information collection requirements which necessitate approval by the Office of Management and Budget.

List of Subjects in 31 CFR Part 358

Government securities, Federal Reserve System.

Dated: October 6, 1987.

Gerald Murphy ,

Fiscal Assistant Secretary.

Part 358 is added to Subchapter B of Title 31, Code of Federal Regulations, Chapter II, to read as follows:

PART 358—REGULATIONS GOVERNING CUBES (COUPONS UNDER BOOK-ENTRY SAFEKEEPING)

Sec.

Authority: 31 U.S.C. Ch 31; 12 U.S.C. 391.

§ 358.0 Applicability.

(a) These regulations apply to CUBES (Coupons Under Book-Entry Safekeeping). CUBES represent physical coupons that were detached from United States Treasury obligations and that were converted to book-entry form pursuant to the terms and conditions contained in Appendix A of this part, these terms and conditions having constituted, in pertinent part, the written "Agreement to the Terms and Conditions Governing CUBES," signed by those depository institutions who participated in the CUBES program prior to publication of the regulations in this part.

(b) These regulations modify the terms and conditions governing CUBES articulated in the written agreements, and referenced in Appendix A, to the extent that they are inconsistent with those terms and conditions. All other terms remain in full force and effect, and bind all holders of CUBES.

§ 358.1 Definitions.

In this part, unless the context indicates otherwise:

"CUBES" refers to physical coupons that have been detached from United States Treasury obligations and that have been converted into book-entry form under the Treasury's Coupons Under Book-Entry Safekeeping program.

"Depository institution" means an entity described in section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)).

"Federal Reserve Bank" or "Reserve Bank" means a Federal Reserve Bank or Branch.

"Physical coupon" means a definitive coupon stripped from the corpus of a bearer definitive United States Treasury note or bond.

"On-line" means an automated telecommunications system which links depository institutions and the Federal Reserve Banks and allows the transfer of book-entry securities to be initiated and received directly by depository institutions with such capability.

"Off-line" means any method for holding and transferring book-entry securities that is not "on-line" as described above.

§ 358.2 Maintenance of CUBES accounts at Federal Reserve Banks nationwide; on-line capability.

(a) By a date determined by the Department of the Treasury, CUBES holdings of each depository institution will be transferred from the off-line system at the Federal Reserve Bank of New York to the Federal Reserve Bank or Branch in the district in which the depository institution is located. Thereafter, transfers may be effected nationwide on the securities wire. Depository institutions with on-line connections to the Federal Reserve Bank in their district may initiate and receive transfers of CUBES directly and against payment. Depository institutions that do not have on-line connections with the Federal Reserve Bank in their district may inititate and receive transfers of CUBES against payment in accordance with the procedures normally used for off-line book-entry securities.

(b) The terms and conditions governing off-line transfers of CUBES as provided in the written agreement governing CUBES also apply to the one-time transfer of CUBES balances from the off-line system at the Federal Reserve Bank of New York to the Federal Reserve Bank in the district in which the depository institution is located. However, no fee will be charged for this transfer.

(c) CUBES balances cannot be transferred back to the off-line system at the Federal Reserve Bank of New York.

(d) The on-line book-entry transfer fee applies to on-line transfers of CUBES. The off-line book-entry transfer fee applies to off-line transfers of CUBES.

(e) Upon transfer from the off-line system at the Federal Reserve Bank of New York to the Federal Reserve Bank in the depository institution's district, amounts of less than one dollar in the aggregate per CUBES CUSIP are waived.

§ 358.3 Governing regulations.

CUBES are deemed to be securities for purposes of Subpart O of Part 306 of this title, until such time as the TRADES (Treasury/Reserve Automated Debt Entry System) regulations are published in final form, at which time CUBES will be deemed to be securities for purposes of Subparts A, B, and D of Part 357 of this title.

§ 358.4 Supplements, amendments or revisions.

The Secretary may, at any time, prescribe additional supplemental, amendatory or revised regulations with respect to CUBES.

Appendix A to Part 358—Terms of the Written Agreement Governing Participation in the CUBES Program

(1) By signing this agreement and by submitting coupons for conversion to book-entry accounts under CUBES, the undersigned depository institution (DI) agrees to be bound by all the terms and conditions stated herein and agrees to follow all written instructions and procedures provided by the Federal Reserve Bank of New York (FRBNY) and the Treasury.

(2) Presentation of physical coupons to FRBNY for conversion to book-entry accounts under the CUBES program constitutes a representation by the DI that it has authority to convert said coupons to book-entry form and that said coupons were stripped prior to January 5, 1987.

(3) Instructions to effect transfers between CUBES accounts constitutes a representation that the DI has authority to effect such transfers.

(4) The Treasury and FRBNY acting as fiscal agent of the United States, shall not be liable for conversion or for participation in any breach of fiduciary duty or legal obligation if the DI has no right or authority to convert the coupons to book-entry form or to take other actions in respect to book-entry accounts in CUBES.

(5) Neither the Treasury nor FRBNY shall be liable for any loss incurred by the DI which results from the failure of the DI to properly follow the written procedures provided by FRBNY and the Treasury.

(6) Coupons will be accepted for conversion only between January 5, 1987 and April 30, 1987. No coupons will be accepted for conversion from the undersigned after April 30, 1987. Coupons shall be submitted in accordance with a schedule provided by FRBNY.

(7) The DI agrees to bear the full cost and risk of loss associated with the delivery of the coupons to FRBNY. The United States assumes the risk of transportation of the submitted coupons between FRBNY and the Treasury.

(8) Coupons must be submitted to FRBNY in accordance with the instructions provided and must be accompanied by Form GB 122, executed by an authorized officer of the DI.

(9) Only stripped Treasury coupons maturing on or after January 15, 1988, are eligible for conversion to book-entry form under CUBES, except those maturing after the first date of call.

(10) Any coupons which are returned to the DI will be returned at the DI's risk and expense.

(11) The DI's presentation(s) of physical coupons will be subject to rejection or adjustment until verified by both FRBNY and the Treasury.

(12) The DI will pay a non-refundable fee of four dollars ($4.00) for each coupon presented for the CUBES program. The fee for any coupons which are rejected by the Treasury, for whatever reason, is not refundable.

(13) After processing and verification by FRBNY, FRBNY will credit amounts accepted to special "off-line" book-entry accounts to be established at FRBNY. Verification by Treasury will be accomplished within ten (10) business days of receipt of the coupons at Treasury. No trading activity in the CUBES account will be allowed during this ten day period. If at any time after this ten (10) day period the Treasury determines that coupons were improperly credited to the DI's CUBES account, such as in the case of a previously undetected counterfeit, the Treasury reserves the right to adjust the DI's CUBES account pursuant to the terms of clause fifteen (15) of this agreement.

(14) CUBES accounts will be maintained separately from accounts maintained in Treasury's STRIPS (Separate Trading of Registered Interest and Principal of Securities) program.

(15) In the event that the Treasury makes an adjustment to or rejects all or part of a deposit, FRBNY is authorized to delete from the DI's CUBES account CUBES of the same payment date and face value (i.e., the same "generic" CUBES CUSIP) as those for which the DI received credit but were subsequently rejected. If no such CUBES exist in the DI's CUBES account, the DI will be instructed by FRBNY as to how an adjustment will be made. In the event that the DI fails to comply with FRBNY's instructions within five (5) business days of receipt of such instructions, FRBNY reserves the right to debit the DI's reserve or clearing account for the face value of the rejected coupon(s).

(16) Off-line transfers between CUBES accounts that occur after conversion to book-entry will require written or "tested telephonic" instructions via the DI's local Federal Reserve Bank to FRBNY. CUBES transactions will not be processed unless CUBES accounts have been properly established and FRBNY has received appropriate instructions from both the sending and receiving DI's. Book-entry balances will be adjusted to reflect transfers on a one day lagged basis by FRBNY, volume permitting. Such off-line transfers may take place only between DIs. Payments associated with transfers of CUBES must be settled outside of the book-entry system. Instructions that request delivery or receipt against payment will be rejected.

(17) The Treasury and FRBNY shall not be liable for any action taken in accordance with the information set out in written or "tested telephonic" transfer requests provided by the DI.

(18) Except as otherwise provided by regulation, circular, or written agreement, FRBNY shall be liable in connection with any action taken or omission by it only for its failure to exercise ordinary care. FRBNY and the Treasury shall not have or assume any responsibility to any party except the sending and receiving DIs involved in a CUBES transaction. FRBNY and the Treasury shall not be liable, in connection with a CUBES transaction, for the insolvency, neglect, misconduct, mistake or default of another bank or person, including the immediate participants.

(19) Book-entry transfers under the CUBES program will be subject to the Treasury fee schedule applicable for the transfer of other off-line book-entry securities. The Treasury reserves the right to revise this fee schedule at any time by notice in the **Federal Register**.

(20) The DI agrees that all charges associated with its CUBES account, including the per coupon conversion fee, will be processed against its reserve or clearing account at its local Federal Reserve Bank, as such charges accrue and without prior notice.

(21) Once stripped coupons have been converted to book-entry form, reconversion to physical form will not be possible.

(22) Principal (corpus) securities from which interest coupons have been stripped will not be converted into book-entry form.

(23) Converted coupons are not eligible as collateral for tax and loan balances or other public funds.

(24) This agreement shall be construed in accordance with Federal law, the

general regulations governing United States Securities, Federal Reserve regulations, and FRBNY's operating circulars.

(25) The Secretary of the Treasury reserves the right, in his discretion, to waive or modify any provision or provisions of these terms and conditions in any particular case or class of cases if such action is not inconsistent with law and does not impair any existing right.

[FR Doc. 87-25251 Filed 10-30-87; 8:45 am]
BILLING CODE 4810-35-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 361

[DoD Directive 5105.42]

Defense Investigative Service (DIS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule revises 32 CFR Part 361. It has been developed to reflect the transfer of responsibility for DIS from the Department of Defense, Office of the General Counsel to the Deputy Under Secretary of Defense for Policy and to update policy concerning the administration and functions of DIS.

EFFECTIVE DATE: June 14, 1985.

FOR FURTHER INFORMATIDN CONTACT: William H. Bell, Office of the Deputy Under Secretary of Defense for Policy, the Pentagon, Room 3C267, telephone (202) 697-3969.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 361

Organization and functions (government agencies).

Accordingly, 32 CFR Part 361 is revised as follows:

PART 361—DEFENSE INVESTIGATIVE SERVICE (DIS)

Sec.

Authority: 10 U.S.C. Chapter 4.

§ 361.1 Reissuance and purpose.

This part revises 32 CFR Part 361 and, pursuant to the authority vested in the Secretary of Defense under Title 10, U.S. Code assigns direction, authority, and control over the Defense Investigative Service (DIS) to the Deputy Under Secretary of Defense for Policy (DUSD(P)), and prescribes the organization and management, functions, responsibilities, relationships, and authorities described in the following.

§ 361.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

§ 361.3 Organization and management.

(a) The DIS is a separate agency of the Department of Defense under the direction, authority, and control of the DUSD(P).

(b) The DIS shall consist of a Director, appointed by the Secretary of Defense, a management headquarters; a Defense Industrial Security Clearance Office (DISCO); a Personnel Investigations Center (PIC); a Defense Security Institute; and such subordinate units and field activities as are established by the Director, DIS, or as assigned to the DIS by the Secretary of Defense. Subordinate units and field activities may be located overseas in support of the industrial security mission.

(c) The DIS shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(d) Military personnel may be assigned to the DIS from the Military Departments in accordance with approved authorizations and established procedures for assignment to joint duty.

§ 361.4 Functions.

The DIS is a law enforcement, personnel security investigative, and industrial security agency and shall:

(a) Provide a single, centrally directed personnel security investigative service to conduct personnel security investigations for DoD Components within the United States and its Trust Territories and, when authorized by the DUSD(P), for other U.S. Government departments and agencies. The DIS shall request the Military Departments, or when appropriate other U.S. Government activities, to accomplish investigative requirements assigned to it in other geographic areas.

(b) Operate a consolidated Personnel Security Investigations Center in accordance with DoD Directive 5200.27 [1].

(c) Manage the Defense Central Index of Investigations.

(d) Administer the Defense Industrial Security Program (DISP) under DoD 5220.22-R.

(e) Operate the DISCO as a consolidated central facility to process industrial personnel security clearances.

(f) Administer the Defense Industrial Facilities Protection Program (DIFPP) under DoD Directive 5160.54 [2].

(g) Provide inspection policy and procedures essential to assess DoD contractor compliance with DoD physical security requirements for the protection of sensitive conventional arms, ammunition and explosives (AA&E) under DoD Instruction 5220.30 [3].

(h) As authorized by the DUSD(P) and under 32 CFR Part 213 provide support for law enforcement investigations involving DoD personnel, facilities, or contractors conducted by authorized investigative agencies of the Military Departments, Inspector General, Department of Defense (IG, DoD), the Federal Bureau of Investigation, or other Federal investigative agencies.

(i) Conduct investigations of unauthorized disclosure of classified information not under the jurisdiction of the Military Departments and other investigations as the DUSD(P) may direct.

(j) Review criminal history record information at police local, State, or Federal law enforcement agencies; and related record repositories, as required.

(k) Conduct surveys and prepare analyses and estimates of managed programs.

(l) Provide administrative and computer support to the Defense Integrated Management Information System (DIMIS).

(m) Maintain an official seal and attest to the authenticity of official DIS records under that seal.

§ 361.5 Responsibilities.

(a) The *Director, Defense Investigative Service,* shall:

(1) Organize, direct, and manage the DIS and all assigned resources.

(2) Establish standards and procedures for certification and accreditation of DIS personnel assigned to perform investigative and industrial security duties.

(3) Provide for industrial security and personnel security investigative training for DIS personnel and information and industrial security training for DoD and

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center 5801 Tabor Avenue, Attn: Code 301, Philadelphia, PA 19120.

[2] See footnote 1 to § 361.4(b).

[3] See footnote 1 to § 361.4(b).

other U.S. Government personnel, employees of U.S. Government contractors, and selected foreign governments.

(4) Program, budget, account for, and report the activities of the DIS in accordance with the policies and procedures established by the Secretary of Defense.

(5) Refer to the appropriate civilian and military investigative agency matters developed as a result of DIS investigations that involve alleged criminal misconduct or have a significant intelligence or counterintelligence aspect.

(6) Under normal circumstances, refer alleged criminal activity by DIS personnel to the Office of the Assistant Inspector General for Investigations (OAIG–INV), DoD who shall make referral to the Department of Justice (DoJ). If the OAIG–INV or DoJ decline investigative jurisdiction, the Director shall assign DIS personnel to conduct an investigation and determine appropriate administrative action to be taken.

(7) Administer the DISP, DIFPP, and the AA&E Programs.

(8) Develop, publish, and implement procedures under the policy guidance and general supervision of the DUSD(P) with respect to the DISP, DIFPP, and AA&E Programs.

(9) Arrange, conduct, and participate in meetings, seminars, and conferences between industry, industrial and professional associations, international organizations, foreign governments, and the Department of Defense and other U.S. Government agencies concerning all aspects of industrial security.

(10) Administer the Security Classification Management Program in industry under E.O. 10865 and E.O. 12356, including promulgation of policy, regulatory provisions, educational requirements, and resolution of problems.

(11) Under the general supervision and approval of the DUSD(P), prepare and publish Industrial Security Letters and Industrial Security Bulletins.

(12) Obtain reports, information advice, and assistance, consistent with DoD Directive 5000.19 [4] as may be necessary for the performance of assigned functions and responsibilities.

(13) Ensure that all allegations of wrongdoing directed against DIS employees are promptly and thoroughly reviewed, evaluated, and processed in accordance with Office of Personnel Management (OPM), DoD, and DIS regulations, instructions, directives and where applicable, Federal statutes.

[4] See footnote 1 to § 361.4(b).

(b) The *Heads of DoD Components* shall cooperate with and assist the Director, DIS, by providing access to information within their respective fields as required for the DIS to carry out functions assigned by this part.

(c) The *Secretaries of the Military Departments* shall ensure that the overseas military investigative agencies provide prompt responses to DIS personnel security lead requests in order to expedite personnel security investigative matters within the DIS.

§ 361.6 Relationships.

The Director, DIS, shall carry out the above responsibilities under the direction, authority and control of the DUSD(P) and shall:

(a) Maintain liaison with other DoD Components, law enforcement agencies, industry, professional associations, academies, international organizations, foreign governments, and other agencies for the exchange of information in the field of assigned responsibility and shall render assistance, as appropriate, within the limits of established policy.

(b) Maintain a close working relationship with industrial representatives to encourage industry participation and cooperation in the furtherance of the DISP.

(c) Use existing DoD facilities and services whenever practical to achieve maximum efficiency.

Appendix A—Delegations of Authority

The Director, DIS, or in the absence of the Director, a person acting for the Director, is hereby delegated, subject to the direction, authority, and control of the DUSD(P), and in accordance with DoD policies, directives, and instructions, and pertinent publications, authority as required in the administration and operation of the DIS to:

1. In accordance with 5 U.S.C. 302 and 3101, employ, direct, and administer DIS civilian personnel.

2. Fix rates of pay for wage board employees exempt from 5 U.S.C. Chapter 51, on the basis of rates established under the Coordinated Federal Wage System. In fixing those rates, the wage schedules established by DoD Wage Fixing Authority shall be followed.

3. Establish advisory committees and part-time advisors for the performance of DIS functions pursuant to 10 U.S.C. 173, and to hire experts and consultants under 5 U.S.C. 3109(b), and the agreement between the DoD and the Office of Personnel Management on employment of experts and consultants, June 21, 1977.

4. Administer oaths of office incident to entrance into the Executive Branch of the Federal government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903(b), and to designate in writing other officers and employees of the DIS to perform this function or to administer oaths incident to any investigation conducted by the DIS.

5. Establish a DIS Incentive Awards Board and pay cash awards to, and incur necessary expenses for, the honorary recognition of civilian employees of the government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the DIS or its subordinate activities in accordance with 5 U.S.C. 4503, and Office of Personnel Management regulations.

6. Perform the following functions in accordance with 5 U.S.C. 7532; Executive Order 10450, April 27, 1953; and DoD 5200.2–R, February 1984.

a. Designate the security sensitivity of positions within the DIS.

b. Authorize, in the case of an emergency, the appointment of a person to a sensitive position in the DIS for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension and, when authorized by the DUSD(P), terminate the services of a DIS employee in the interests of national security.

7. Clear DIS personnel and such other individuals as may be appropriate for access to classified DoD material and information in accordance with the provisions of DoD 5200.2–R. As an exception, the personnel security investigation of individuals who are incumbents of, or are proposed for, Senior Executive Service positions within the DIS as Director, Deputy Director (Investigations), or Deputy Director (Industrial Security), shall be conducted by a non-DIS investigative agency designated by the DUSD(P). Similarly, the results of such investigations shall be adjudicated by a non-DIS authority designated by the DUSD(P).

8. Act as an agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, and, as such agent, make all determinations and certifications required or provided under 26 U.S.C. 3122 and 42 U.S.C. 405(p) (1) and (2), with respect to DIS personnel.

9. Authorize and approve overtime work for DIS personnel in accordance

with the provisions of § 550.111 of the OPM Regulations.

10. Authorize and approve:

a. Travel for DIS personnel in accordance with the Joint Travel Regulations (JTR), Volume 2, Department of Defense civilian personnel.

b. Temporary duty travel for military personnel assigned or detailed to the DIS in accordance with JTR, Volume 1, Members of the Uniformed Services.

c. Invitational travel to persons serving without compensation whose consultative, advisory, or highly specialized technical services are required in a capacity that is directly related to, or in connection with, DIS activities, pursuant to 5 U.S.C. 5703.

11. Approve the expenditure of funds available for travel by military personnel assigned or detailed to DIS for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412, 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

12. Develop, establish, and maintain an active and continuing Records Management Program under 44 U.S.C. 3102 and DoD Directive 5015.2, September 17, 1980.

13. Enter into and administer contracts, directly or through a DoD Component, or other Government department or agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DIS. To the extent that any law or Executive Order specifically limits the exercise of such authority to persons at the secretarial level or a Military Department, such authority will be exercised by the Assistant Secretary of Defense (Manpower, Installations, and Logistics).

14. Establish and use imprest funds for making small purchases of material and services, other than personal, for the DIS when it is determined it is more advantageous and consistent with the best interests of the government, in accordance with the provisions of DoD Instruction 5100.71, March 5, 1973.

15. Authorize the publication of advertisements, notices, or proposals in public periodicals as required for the effective administration and operations of the DIS pursuant to 44 U.S.C. 3702.

16. Establish and maintain appropriate property accounts for DIS. Appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DIS property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

17. Promulgate the necessary security regulations for the protection of property and activities under the jurisdiction of the Director, DIS, pursuant to DoD Directive 5200.8, July 29, 1980.

18. Develop and maintain DoD publications and changes thereto, consistent with DoD 5025.1–M, April 1981.

19. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government agencies as required for the effective performance of responsibilities and functions assigned to the DIS.

20. Issue appropriate implementing documents and establish internal procedures to ensure that the selection and acquisition of automated data processing resources are conducted in accordance with DoD Directive 7920.1, October 17, 1978; the Federal Property Management regulations; and the Federal Acquisition Regulation.

The Director, DIS, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 27, 1987.

[FR Doc. 87–25278 Filed 10–30–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD5 87–038]

Security Zone; James River, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the current regulations regarding the entry of shellfishermen into the security zone in the vicinity of Newport News Shipbuilding and Dry Dock Company along the James River. This rule permits shellfishing vessels to enter the security zone if the owners register their vessels with the Captain of the Port, Hampton Roads, VA.

EFFECTIVE DATE: December 2, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant D. T. Ormes, (804) 398–6388.

SUPPLEMENTARY INFORMATION: On July 16, 1987 the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** for these regulations (52 FR 26703). Interested persons were requested to submit comments. No comments were received.

Drafting Information

The drafters of these regulations are Lieutenant D. T. Ormes, Project Officer, Port and Vessel Safety Branch, Fifth Coast Guard District, and Commander R. J. Reining, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion

No changes have been made to the proposed rule. The collection of information for registering the vessels with the Captain of the Port is authorized under OMB Control # 2115–0076.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This proposal should not have any economic impact on the affected industry, therefore a full regulatory evaluation is unnecessary. If there is to be any adverse affect caused by these changes, it has not been identified. In all likelihood, the regulations will, if anything, reduce any economic burden to the public.

The Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[Amended]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. In § 165.504, paragraph (c)(1)(vii) is revised to read as follows:

§ 165.504 Newport News Shipbuilding and Dry Dock Company Shipyard, James River, Newport News, VA.

* * * * *

(c) * * *

(1) * * *

(vii) Commercial shellfish harvesting vessels taking clams from the shellfish beds within the zone, if—

(A) The owner of the vessel has previously provided the Captain of the Port, Hampton Roads, Virginia, information about the vessel, including:

(1) The name of the vessel;

(2) The vessel's official number, if documented, or state number, if numbered by a State issuing authority;

(3) A brief description of the vessel, including length, color, and type of vessel;

(4) The name, Social Security number, current address, and telephone number of the vessel's master, operator, or person in charge; and

(5) Upon request, information the vessel's crew.

(B) The vessel is operated in compliance with any specific orders issued to the vessel by the Captain of the Port or other regulations controlling the operation of vessels within the security zone that may be in effect.

* * * * *

Dated: October 20, 1987.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 87-25306 Filed 10-30-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3285-4]

Oklahoma; Schedule of Compliance for Modification of Oklahoma Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Oklahoma compliance schedule to adopt program modifications.

SUMMARY: September 22, 1987, EPA promulgated amendments to the deadline for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Oklahoma to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Prince, State Programs Section (6H-HS), Hazardous Waste Programs Branch, U.S. EPA Region VI, Allied Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone (214) 655-6760.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1-271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712 September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Oklahoma

Oklahoma received final authorization for its hazardous waste program on January 10, 1985, (49 FR 50362, December 27, 1984). Today EPA is publishing a compliance schedule for Oklahoma to obtain program revisions for the following Federal program requirements:

(1) Permit Rules: Settlement Agreement, 49 FR 17718, 4/24/84

(2) State Availability of Information, HSWA section 3006(f), 11/8/84

(3) Redefinition of Solid Waste, 50 FR 614, 1/4/85

(4) Closure, Post-Closure and Financial Responsibility Requirements, 51 FR 16422, 5/2/86

The State has agreed to obtain the needed program revisions according to the following schedule:

12-31-87 State will submit a revision application that reflects changes through Non-HSWA Cluster II.

12-31-87 State will submit statutes and statutory checklist.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: October 20, 1987.

Robert E. Layton, Jr.,

Regional Administrator.

[FR Doc. 87-25299 Filed 10-30-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 2

Confidentialty of Alcohol and Drug Abuse Patient Records; Correction

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, PHS, HHS.

ACTION: Final rule; correction.

SUMMARY: The Alcohol, Drug Abuse, and Mental Health Administration is correcting errors in the preamble and final rule titled, "Confidentiality of Alcohol and Drug Abuse Patient Records" published in the issue of Tuesday, June 9, 1987, beginning on page 21796.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: The National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20852, (301) 468-2600 (for copies of the final rule); the ADAMHA Division of Intergovernmental Activities and Data Policy (301) 443-3820 (for technical assistance to States); Judith T. Galloway (301) 443-4640 (for questions of a legal nature).

SUPPLEMENTARY INFORMATION: This document corrects the rule document 87-11785 beginning on page 21796 in the issue of Tuesday, June 9, 1987. Section 2.52(a)(3) was inadvertently omitted in that document. See explanation of the omitted paragraph in the preamble on page 21800, third column under the heading "Assessment of Research Risks". This document also corrects a paragraph designation and a typographical error.

List of Subjects in 42 CFR Part 2

Alcohol abuse, Alcoholism, Confidentiality, Drug abuse, Health records, Privacy.

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 408 of Pub. L. 92-255, 86 Stat. 79, as amended by sec. 303 (a), (b) of Pub. L. 93-282, 83 Stat. 137, 138; sec. 4(c)(5)(A) of Pub. L. 94-237, 90 Stat. 244; sec. 111(c)(3) of Pub. L. 94-581, 90 Stat. 2852; sec. 509 of Pub. L. 96-88, 93 Stat. 695; sec. 973(d) of Pub. L. 97-35, 95 Stat. 598; and transferred to sec. 527 of the Public Health Service Act by sec. 2(b)(16)(B) of Pub. L. 98-24, 97 Stat. 182 and as amended by sec. 106 of Pub. L. 99-401, 100 Stat. 907 (42 U.S.C. 290ee-3) and sec. 333 of Pub. L. 91-616, 84 Stat. 1853, as amended by

sec. 122(a) of Pub. L. 93–282, 88 Stat. 131; and sec. 111(c)(4) of Pub. L. 94–581, 90 Stat. 2852 and transferred to sec. 523 of the Public Health Service Act by sec. 2(b)(13) of Pub. L. 98–24, 97 Stat. 181 and as amended by sec. 106 of Pub. L. 99–401, 100 Stat. 907 (42 U.S.C. 290dd–3).

2. In the document preamble, on page 21803 in the second column, first paragraph, 14th line, the citation "2.53(c)" should read "2.53(d)".

§ 2.32 [Amended]

3. In § 2.32, remove the paragraph designation (a).

§ 2.52 [Amended]

4. In § 2.52, amend paragraph (a)(1) by removing the word "and" at the end of the paragraph, amend paragraph (a)(2)(ii) by removing "." and adding "; and" at the end of the paragraph, and add paragraph (a)(3) to read as follows:

(a) * * *

(3) Has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project has reviewed the protocol and determined that:

(i) The rights and welfare of patients will be adequately protected; and

(ii) The risks in disclosing patient identifying information are outweighed by the potential benefits of the research.

* * * * *

Please note that an additional correction to this document appears elsewhere in the Corrections Section of this issue.

Date: October 22, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87–24965 Filed 10–30–87; 8:45 am]

BILLING CODE 4160–20–M

Proposed Rules

Federal Register
Vol. 52, No. 211
Monday, November 2, 1987

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Alternatives for Resolving Government Contract Appeals

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Administration has under consideration a draft recommendation on alternative means of dispute resolution in governmental contract appeals. Interested persons are invited to comment on the draft recommendation.

DATE: Comments due by Monday, November 16, 1987.

ADDRESS: Send comments to Charles Pou, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Charles Pou, 202–254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Administration is seeking comment on a draft recommendation and report on potential uses in government contract disputes of alternative means of dispute resolution ("ADR"). The report, drafted by Washington attorney Eldon Crowell and Charles Pou of the Conference, examines agencies' ADR experiments to date and seeks to draw lessons from them (copies available on request). The proposed Conference recommendation, which will be discussed in detail when the Committee on Administration meets next month, calls on major contracting agencies, and those who deal with them, to explore seriously the potential uses for ADR and to begin creating an atmosphere in which these methods can be readily employed. In brief, it recommends: (1) Amendments to the Contract Disputes Act and Office of Federal Procurement Policy Guidance authorizing and encouraging greater resort to ADR; (2) agency policy statements and rules encouraging voluntary use of ADR; (3) increased guidance on appropriate documentation justifying ADR settlements; and (4) priority attention by agencies and others in interested groups to training in negotiation and other ADR skills for BCA judges, government attorneys and contracting officers, and others involved in contract appeals. The proposal also offers advice on locating neutrals, calling for creation of a central roster that includes board of contract appeals judges interested in taking such a role, to help resolve government contract disputes. It concludes with suggestions on the application to contract appeals of the ADR methods most commonly used, particularly the minitrial. Comments on the draft recommendation should be received by Monday, November 16. Reactions to the draft report should be received within a week after that date.

The Conference's Committee on Administration will meet again in late November for further consideration of the draft recommendation in the light of any comments that may be received. At that time, the Committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for December 17 and 18, 1987. Comments should be sent to the address given above.

Draft Recommendation

Alternatives for Resolving Government Contract Appeals

Government procurement has become a major component of federal spending. It now comprises an important part of the nation's economy. The recent expansion of government contracting has been matched, perhaps exceeded, by the rise in disputes between agencies and contractors. Increasingly, management problems are handed over to lawyers and accountants to be resolved contentiously by criteria that are often only marginally relevant. Causal factors include increased regulatory requirements; reduced authority of agency contracting officers; a greater willingness among contractors to resort to litigation; an expanding government contracts bar; broadened notions of due process; enhanced congressional oversight that can discourage settlement; and the establishment (or expansion) of offices of inspector general and intra-agency audit offices that often inhibit decisional flexibility.

Most knowledgeable government officials, contractors and attorneys agree that government contract appeals have become too onerous, too expensive and too time-consuming. Despite Congress' goals in enacting the Contract Disputes Act of 1978 ("CDA") to provide an expeditious alternative to court litigation and to encourage negotiated settlements, most appeals are not now resolved either promptly or inexpensively. Agency boards of contract appeals ("BCAs"), originally intended to be alternatives to courts, have become "judicialized," with depositions, discovery and lengthy opinions common.

The system established by the CDA [1] begins with the contracting officer ("CO"), an agency official whose function is to enter into and administer government contracts. Any claim arising out of a contract is to be presented to the CO. The CO has a dual role: to represent the government as a party to the contract, but also to make initial decisions on claims subject to certain procedural safeguards. If the dispute is not amicably resolved, the CDA requires the CO to issue a brief written decision stating his or her reasons. A contractor dissatisfied with a CO's decision may appeal either to an agency BCA or directly to the U.S. Claims Court. The proceedings become considerably more formal at this stage.

A variety of remedies have been prescribed for the growing cost, delay, and other problems encountered in federal contract disputes. They range from marginal revisions of the boards (e.g., enlargement of BCA resources), to increased professionalization of COs, to structural changes in the ways agencies do business. While a number of these proposals have merit, the Conference is focusing herein only on the cluster of methods that have come to be known as alternative means of dispute resolution ("ADR").[2] These methods are consistent

[1] 41 U.S. Code 601–613; 5 U.S.C. 5108(c)(3); 28 U.S.C. 1346(a)(2), 149(a)(2), 2401(a), 2414, 2510, 2517; 31 U.S.C. 1304(a)(3)(C) (1982); enacted November 1, 1978 by Pub. L. No. 95–563, 92 Stat. 2383.

[2] These include arbitration, factfinding, minitrial, mediation, facilitation, convening, conciliation, and negotiation.

with CDA's goals, and have proven efficient and fair. They serve to involve decisionmakers, rather than their representatives, in the conflict resolution process. ADR methods have regularly aided private parties to resolve disputes similar to those decided by BCAs.

Several ADR methods are particularly appropriate to resolving many government contract claims, and a few agencies have begun to experiment successfully with them. The Conference urges all major contracting agencies, and persons who deal with them, to explore seriously the potential uses for ADR and to begin creating an atmosphere in which these methods can be readily employed.[3] This recommendation offers advice on the application of the ADR methods most commonly used to cases before agency boards of contract appeals.

Recommendation

1. Agencies' ADR policies and practices—a. Congress should amend the Contract Disputes Act (1) to authorize the contractor and the government to agree to use any alternative means of dispute resolution, including arbitration [4] or other mutually agreeable procedures, for resolving claims relating to agency contracts and (2) to encourage COs to make all reasonable efforts to resolve a claim or dispute consensually, either prior to issuance of a decision or subsequently.

b. The Office of Federal Procurement Policy should issue a policy statement urging COs, before issuing a decision likely to be unacceptable to a claimant, to recommend to the parties and their representatives that they seek to resolve their differences by exploring and using ADR. The policy statement should also encourage agencies to adopt policies or rules concerning ADR, as set forth below.

c. Agencies should adopt policies encouraging voluntary use of ADR in contract disputes. The policies should place the responsibility for implementing ADR with contracting officers, government counsel, and BCA judges. These policies should make clear that the responsible agency officials will support settlements reached by means of properly selected ADR methods. The policy should also provide for systematic review of all cases for susceptibility to ADR, specify who has authority to approve the selection of a case for ADR, and set forth guidance on documenting the negotiation process or justifying settlements. Agencies should also consider adopting a policy requiring COs to offer certain forms of ADR to contractors in specified kinds of disputes (e.g., those involving $25,000 or less).

d. Agencies should adopt regulations that (1) authorize agency officers to make use of ADR in contract disputes; (2) make provisions for automatically alerting the parties, both at the CO level and as soon as an appeal is filed, that one or more ADR methods is available; (3) authorize BCA judges to encourage ADR use and to require the attendance, at any conference held for the purposes of proposing or implementing ADR, of at least one representative of each party who has authority to settle all matters [alternative: negotiate concerning the resolution of all issues in controversy]; (4) briefly describe the alternative procedures; and (5) authorize the parties to agree to vary any procedural rule in their case.

e. Agency boards of contract appeals should:

(1) Routinely include in docketing notices an announcement indicating the availability of ADR, describing the available methods, and telling how interested persons can follow up to explore potential ADR use in their cases.

(2) Amend their procedural rules to provide explicitly for conferences to consider the possible use of ADR in each case to help dispose of any or all issues in dispute.

f. Presiding and chief judges at BCAs should regularly review their dockets and suggest use of a settlement judge, mediation, minitrial, or other ADR methods whenever appropriate.

2. Employing alternatives in contract disputes—a. *Finding neutrals* [5] (1) The Administrative Conference, in consultation with the Federal Mediation and Conciliation Service and other interested groups, should establish a central roster of minitrial advisors and other neutrals available to help resolve government contract disputes. The list should include, at a minimum:

(a) All persons who have experience as neutral advisors in government contracts minitrials;

(b) Any BCA judges who wish to serve as neutral advisors for disputes within their own agency, another agency, or both. (Some safeguards to ensure interagency reciprocity and to assure no other involvement with the dispute may be necessary); and

(c) Any retired federal district court and Claims Court judges, BCA judges, and ALJs who are interested.

(2) In any case before a contracting officer or a BCA, the parties should have the option of selecting *any* mutually agreeable neutral (subject to his or her availability), regardless of where the neutral comes from.

(3) Each BCA should take steps to make available its judges to serve as settlement judges, minitrial advisors, or other neutrals to help resolve disputes before other agencies' BCAs.

(4) No standard fee scale should be established, and, indeed, neutrals should be encouraged to serve in some cases *pro bono* or at reduced rates; agencies expecting to have their judges loaned should consider developing standards for reimbursement by the user agencies.

b. *Minitrials.* (1) Agencies should develop and distribute minitrial guidelines that include sections dealing with criteria for identifying appropriate cases; rules as to any discovery; roles of the participants, including any neutral; authority of the principals; exchange of position papers, audit reports, quantum submissions, and other documents and exhibits; procedure and format of the hearing; possible time limit on the negotiations; fees and expenses; and confidentiality of the proceedings. The guidelines, which should be used only as procedural suggestions, should also give each party the right to terminate the minitrial procedure at any time for any reason.

(2) In selecting principals to represent the agency in a minitrial, agencies should ensure that principals:

(a) Are located high enough in the agency to negotiate, and successfully defend, a binding settlement.

(b) Have authority to bind their organizations in the dispute at hand, or at least to make recommendations that will be accorded substantial weight.

---

[3] The Conference has repeatedly recommended that agencies employ ADR. Recommendation 86-3 calls on agencies to make greater use of mediation, negotiation, minitrials, and other "ADR" methods to reduce the delay and contentiousness accompanying many agency decisions. *Agencies' Use of Alternative Means of Dispute Resolution*, 1 CFR 305.86-3. The Conference has previously called for using mediation, negotiations, informal conferences and similar innovations to decide certain kinds of disputes more effectively. E.g., *Procedures for Negotiating Proposed Regulations*, 1 CFR 305.82-4, 85-5; *Negotiated Cleanup of Hazardous Waste Sites Under CERCLA*, 1 CFR 305.84-4; *Resolving Disputes under Federal Grant Programs*, 1 CFR 305.82-2.

[4] Such arbitration authority should be consistent with the procedures and safeguards set forth in Conference Recommendations 86-3, *id.* and 87-5, *Assuring the Fairness and Acceptability of Arbitration in Federal Programs*, 1 CFR 305.87-5.

[5] In recommendation 86-8, *Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution*, 1 CFR 305.86-8, the Conference addressed issues involving neutrals' availability, qualifications and acquisition. The present Recommendation seeks to elaborate on 86-8 in the context of contract appeals.

(c) Ideally have little prior involvement with the case so as to be able to evaluate objectively the issues and the agency's potential liability.

(d) Have enough technical expertise to grasp the main issues quickly.

(e) Not be at such a high level that his or her involvement will detract in a major way from the agency's operations. Agencies should meet these concerns by, among other things, tailoring the rank of the principal to suit the magnitude of the case and by encouraging ADR use earlier in the case (e.g., the CO level).

(3) Agencies should take steps to make participation as a principal an attractive career step and encourage or provide training in negotiation and mediation skills among groups of potential principals.

(4) Once the principals have had a chance to assess the strengths and weaknesses of both sides' positions, their negotiations should take place promptly and should ordinarily be final and binding. While principals should consider caucusing with others from their organizations at times during the negotiation phase to discuss the progress of the negotiations and agency staff's concerns (and even bringing auditors or other staff members into the negotiations), the responsible principals ordinarily should have, and feel comfortable exercising, authority to resolve all issues before them without seeking further agency approval following the close of negotiations. One exception here may be occasional consultation with in-house counsel in preparation of a settlement or legal memorandum supporting the result.

(5) Principals should generally have access to technical, legal, accounting, or other advice from agency staff during the hearings and negotiations so as to produce a more well-informed, defensible resolution, enhance accountability, and build intra-organizational support for any settlement. Unless secrecy is especially important, it will ordinarily be unwise to sequester most minitrial witnesses, particularly experts, since a looser format may encourage dialogs or exchanges that can help focus issues and sometimes promote agreement.

(6) While the "neutral advisor" who helps the principals at a minitrial assess the merits of a case can be quite useful, the parties should consider foregoing such aid in cases where the principals already have a good working relationship, where issues are simple or amounts small, or, conversely, where complex technical issues predominate to such an extent that it would be futile to waste time trying to educate a neutral. Neutrals probably will also be less needed where the minitrial occurs early on—say, at the CO level—when positions may be less rigid, formal procedures not yet invoked, and fewer parts of the agency involved. In those cases, the CO might well serve as a sort of presider-principal.

(7) A neutral advisor's role should be defined by the parties (at least tentatively) prior to the hearing with input from the principals, who should know what to expect from the neutral. Any shift during the proceeding should be only with the concurrence of the principals.

(8) Where minitrial neutral advisors are used, the parties should consider whether to seek their assistance in any of the following ways:

(a) Presiding over the hearing;

(b) Serving as a source of information, responding to technical legal questions, or offering insights and observations on issues in controversy;

(c) Posing questions at the hearing in a probing yet nonadversarial manner, so as to ensure that the basic facts are ascertained;

(d) Suggesting novel approaches to presenting relevant information;

(e) Working actively during the principals' negotiation sessions to aid settlement, as by advising each side on the strengths and weaknesses of its case, relevant legal principals, and how the law might apply to the facts established;

(f) Serving as a mediator, as by suggesting middle grounds;

(g) Suggesting that certain advisors or staff members be brought into the negotiations or briefed; or

(b) Providing a written, nonbinding opinion to the principals, or helping them prepare a justification for the settlement agreed on.

c. *Mediation.* Agency boards of contract appeals should establish mediation programs, similar to that recently developed by the U.S. Court of Appeals for the District of Columbia Circuit, in which parties can be required to attend an initial mediation session at which distinguished members of the bar serve as mediators. The boards should require parties to be represented at the session by a person with authority to enter into a settlement agreement [alternative: to negotiate concerning the resolution of all issues in controversy]. The boards may wish to exclude from these programs cases involving multiple parties or interviewers. Counsel should be required, where appropriate, to provide specified documents to the mediator, and to prepare short position papers.

d. *Settlement Judges.* (1) Agency boards of contract appeals should institute a procedure under which a settlement judge—not the presiding judge in the case—may be appointed to preside over settlement conferences or negotiations, assess settlement potential, and work with the parties to explore possible settlement of a dispute. The settlement judge device should be capable of being invoked by the chief judge on his own motion or that of any participant or the presiding judge. An order appointing a settlement judge should specify whether, and to what extent, the proceeding is suspended during the settlement negotiations and may define the scope of any negotiations to specified issues. The order may also expressly limit the period for settlement negotiations and require a brief report from the settlement judge.

(2) The settlement judge should be empowered to act as a mediator, to suggest privately what concessions a party should consider, to confer privately as to the reasonableness of each party's case or settlement position, and to require that representatives having full settlement authority be present at the settlement conference. The settlement judge should be prohibited from discussing the merits of a case with any other BCA judge or other person, and should not be called as a witness in the case.

3. *Documentation and oversight.* a. Agencies should offer guidance to their personnel on appropriate documentation justifying settlements that have been reached via ADR; the guidance should balance consideration of accountability and flexibility. For instance, the guidance could require the principal representing the agency in negotiations or his advisor to set down cost and other factors taken into consideration, any pre-negotiation positions developed, and a statement justifying acceptance of the compromise; in short, a reflection of the thought process or rationale of officials who agreed to the settlement. This documentation should not exceed what would ordinarily be used to justify negotiated settlements of contract disputes, and should generally be written after the fact so that ongoing negotiations are not jeopardized or delayed. A neutral who has helped the parties resolve a potentially serious case may be asked to help draw up the justification memo, or offer a brief advisory decision.

b. Since the effectivness of expanded reliance on ADR will depend in part on the degree of support or opposition from relevant congressional committees and

offices of inspector general, these groups should support and encourage these efforts, recognizing that negotiated solutions inevitably involve compromises. These groups, in exercising their authority to investigate or question a specific settlement as circumstances may warrant, should do so with an understanding of the salutary goals of ADR and a recognition that an occasional "bad" settlement or misjudgment in employing ADR methods will not necessarily invalidate their use overall.

4. *Training and outreach.* a. Agencies should give priority attention to offering training in negotiation and other ADR skills to BCA judges, government attorneys, COs, and others involved in contract appeals. Training courses or seminars might be developed by agencies jointly or in cooperation with the Administrative Conference, Federal Mediation and Conciliation Service, Board of Contract Appeals Judges Association, American Bar Association, or other professional organizations. Agencies should also work with other interested groups to sponsor similar programs or outreach sessions for contractors and their representatives, and seek to incorporate materials on ADR into the training curricula for COs and project managers.

b. Agencies should designate an employee to serve as an ADR specialist in connection with contract disputes, and should consider retaining the services of a trained mediator or similar professional to review cases for susceptibility to ADR, advise BCA judges, and mediate selected cases.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87-25448 Filed 10-30-87; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-127-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes, Fuselage Numbers 1237 Through 1368

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain DC-9-80 (MD-80) series airplanes, which currently requires inspection and replacement of certain cowl door latches. That action was prompted by reports of failures of cowl door latches on the engine nacelle. This action would require the replacement of certain cowl door latches installed on additional airplanes, fuselage numbers 1237 through 1276. This condition, if not corrected, could result in the loss of directional control during critical flight regimes, or cause a hazard to the public by falling debris.

DATE: Comments must be received no later than December 28, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-127-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-127-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 87-15-08, Amendment 39-5691 (52 FR 28134; July 28, 1987), applicable to certain McDonnell Douglas Model DC-9-80 (MD-80) series airplanes, to require repetitive visual inspections for fractures of cowl door latch assemblies, part number (P/N) 7958533-517 (Hartwell P/N H2816-3), and replacement, if necessary. In addition, new latch assemblies, P/N 7958533-519 (Hartwell P/N H2816-5), are required to be installed on airplanes, fuselage numbers 1277 through 1368, within 70 days after the effective date of that amendment. Inspection and replacement of the cowl door latch assemblies is required to be accomplished in accordance with the procedures described in McDonnell Douglas DC-9-80 (MD-80) Alert Service Bulletin A71-42, dated June 24, 1987.

That action was prompted by reports of four cases of failed upper cowl door latch assemblies on DC-9-80 (MD-80) series airplanes. All were due to the failure of the internal attachment hooks. Analysis has confirmed that at least three of the attachment hooks failed due to hydrogen embrittlement, the hydrogen being infused into the hooks during the plating process. This condition is due to improper heat treatment after cadmium plating of the high tensile steel hooks. The cause of the fourth failure could not be determined since the fracture surfaces were destroyed by a weld repair. In tracing the manufacturing history of these particular failed attachment hooks, it was revealed that they came from two production lots containing several hundred attachment hooks. McDonnell Douglas has advised FAA that all cowl door latch assemblies manufactured after June 1986 are suspected of having this condition. This condition, if not corrected, could result in the loss of directional control during critical flight regimes, or cause a hazard to the public by falling debris..

Since this condition is likely to exist or develop on other airplanes of this same type design, the FAA proposes to revise AD 87-15-08 to add a requirement to replace all cowl door

latches, P/N 7958533–517 (Hartwell P/N H2816–3) manufactured after June 1986, installed on airplanes, fuselage numbers 1237 through 1276.

It is estimated that 39 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,900.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any Model DC–9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising AD 87–15–08, Amendment 39–5691 (52 FR 28134; July 28, 1987), by redesignating existing paragraphs "B., C., D., and E." as "C., D., E., and F.," respectively, and adding a new paragraph B., as follows:

B. For fuselage numbers 1237 through 1276 only:

Within 45 days after the effective date of this AD, install new latch assemblies P/N 7958533–519 (Hartwell P/N H2816–5) in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A71–42, dated June 24, 1987, or later FAA-approved revisions.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on October 22, 1987.

Mel Yoshikami,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–25258 Filed 10–30–87; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 87–NM–132–AD]

Airworthiness Directives; McDonnell Douglas Model DC–6, –6A, –6B, R6D, and C–118A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to DC–6 series airplanes, which would require inspection and replacement, if necessary, of vertical stabilizer rear spar attach fittings. This proposal is prompted by reports of stress corrosion cracks in the attach fittings at the root of the vertical stabilizer. This condition, if not corrected, could lead to loss of the vertical stabilizer.

DATE: Comments must be received no later than December 28, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–132–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, CI–LOO (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–132–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Following the finding by one operator of stress corrosion cracking in the rear spar attach fittings at the root of the vertical stabilizer of a McDonnell Douglas DC–6 airplane, the FAA issued Action Notice A8300.22, dated May 18, 1987, calling for inspections to be carried out to determine the condition of the fleet. For this initial inspection, the FAA referenced previously-approved Douglas DC–6 Service Bulletin 723, dated May 27, 1957, which describes inspection and replacement, if necessary, of the vertical stabilizer rear spar attach fittings. The operators reported their results, indicating four airplanes with two of the four rear spar attach fittings cracked, and three other airplanes each with one fitting cracked. In-flight failure of these fittings could lead to loss of the vertical stabilizer.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the vertical stabilizer rear spar attach fittings, immediate replacement of fittings with certain cracks, and replacement within three months for

fittings with lesser cracks. The inspections and necessary replacement would be in accordance with McDonnell Douglas DC–6 Service Bulletin 723.

It is estimated that 187 airplanes of U.S. registry would be affected by this AD, that it would take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $269,280.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a signifcant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any small entities operate DC–6 airplanes. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–6, –6A, –6B, R6D, and C–118A series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks and prevent failure of the vertical stabilizer rear spar attach fittings, accomplish the following:

A. Within the next 3 months after the effective date of this AD, unless already accomplished within the last 9 months, and thereafter at intervals not to exceed one year or before further flight, whichever occurs later, inspect the vertical stabilizer rear spar attach fittings, front and rear, right and left, in accordance with Douglas DC–6 Service Bulletin 723, dated May 27, 1957, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. After each inspection, apply LPS–3 corrosion inhibiting oil or equivalent to each fitting.

B. If a crack is found, accomplish the following:

1. Replace the fitting(s) before further flight for each of the following conditions:

a. a crack is found that matches the description in paragraph 1., of Douglas DC–6 Service Bulletin 723, dated May 27, 1957, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region;

b. more than 1 fitting per airplane is cracked;

c. the crack is chordwise.

2. Replace the fitting within the next 3 months after the crack is found, or before further flight, whichever occurs later, if the crack matches the description of paragraph 2., of Douglas DC–6 Service Bulletin 723, dated May 27, 1957, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to comply with the repair requirement of this AD when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60).

This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on October 22, 1987.

Mel Yoshikami,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–25259 Filed 10–30–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

18 CFR Part 37

Federal Energy Regulatory Commission

[Docket No. RM87–35–000]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Extension of Time for Comments

October 27, 1987.

AGENCY: Federal Energy Regualtory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 30, 1987, the Commission issued a Notice of Proposed Rulemaking involving generic determination of rate of return on common equities for public utilities under Part 37 of its regulations (50 FR. 37326, October 6, 1987). The comment period is being extended.

DATE: Comments must be submitted on or before November 20, 1987.

ADDRESS: Submit comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357–8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–25308 Filed 10–30–87; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 85N–0061]

Food Labeling; Public Health Messages on Food Labels and Labeling; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending for 60 days the period for submitting comments on its proposal to allow the listing of public health messages on food labels, and to propose amendments to 21 CFR 101.9 on nutrition labeling. FDA is granting this extension based on

requests for the extension of the comment period.

DATE: Comments by January 2, 1988.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David Hattan, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–245–3117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1987 (52 FR 28843), FDA proposed to allow the listing of public messages on food labeling; the criteria it will apply in evaluating the propriety of such labeling; the formation of a Public Health Service committee that will attempt to develop "health messages" appropriate for use on food labeling and related amendments to 21 CFR 101.9 on nutrition labeling. Interested persons were given until November 2, 1987, to submit written comments on the proposal.

The American Dietetic Association (ADA) submitted a request seeking a 60-day extension of the comment period on the proposed rulemaking. ADA points out that many of its members will be attending professional meetings at the time comments are due to be received. For this reason, they are requesting an extension of the comment period. The agency also received a request for a 60-day extension on behalf of the National Nutritional Foods Association (NNFA) and the National Association of Pharmaceutical Manufacturers (NAPM) to allow time for these industry organizations to compile relevant literature and data on dietary supplement use.

The American Institute of Nutrition (AIN) has also submitted a request seeking a 30- to 60-day extension. A large proportion of the members of AIN are involved in academic medicine and teaching of graduate and undergraduate programs in nutritional sciences. Because of the involvement of its members in the start of the academic year and the October meeting of the AIN Council, AIN requested an extension.

The National Soft Drink Association (NSDA) has also submitted a petition for an extension to the comment period. NSDA's next annual Executive Board meeting will be in November. NSDA has requested a 90-day extension so that its Scientific and Legal Advisory Committees can formulate comments to FDA based on the recommendations of its Executive Board.

The agency believes that a 60-day extension of the comment period is reasonable and will provide sufficient time for ADA, NNFA, NAPM, AIN, NSDA, and other interested persons to prepare comments on the proposed rule. Therefore, the agency is granting an extension of 60 days at this time.

Interested persons may, on or before January 2, 1988, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 27, 1987.

John M.Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–25272 Filed 10–30–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 24

[Docket No. R–87–0831; FR–1676]

Debarment, Suspension and Limited Denial of Participation[1]

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make conforming changes to Part 24 based on the OMB final Guidelines for Nonprocurement Debarment and Suspension (Guidelines) (52 FR 20360, May 29, 1987). Primarily, these changes would: (1) Provide for government-wide effect of sanctions to all tiers of nonprocurement participants; (2) establish a comprehensive reporting system to the General Services Administration of participants who have been debarred, suspended, declared ineligible, voluntarily excluded or subjected to limited denials of participation; (3) require certain paritcipants to certify that they (or any person in specified capacities) have not, in the preceding three years, been subjected to, or been proposed for, sanctions or otherwise been indicted, convicted or had a civil judgment rendered against them for any of the offenses listed at § 24.6(a); (4) abolish the time limitation on the decision to order debarment or suspension; (5) expand the definition of "legal proceedings" to include proceedings by Federal, state, local or quasi-governments; (6) abolish the requirement that a shareholder have a 10% or greater equity interest before his or her seriously improper conduct can be imputed to a participant or contractor; (7) provide that debarred and suspended individuals are excluded from participation in covered transactions in various capacities; (8) provide that debarment may be imposed under § 24.6(c)(2) for doing business with a debarred, suspended or otherwise excluded person, where it is known *or* where it reasonably should have been known that the person is excluded from participation in covered transactions; (9) broaden the circumstances under which conduct may be imputed to a contractor or participant under § 24.11(b); (10) amend the list of covered program transactions to include scholarships and fellowships, as well as awards, subawards, contracts, subcontracts and transactions at any tier that are charged as direct *or* indirect costs; (11) revise the definitions of "control", "participant", and "suspension" to conform to the definitions in the Guidelines; (12) require that, upon issuance of a notice of proposed debarment (and in the absence of a waiver), the Department will not make any new awards to a respondent until the final debarment decision is rendered; (13) specify that the Debarring Official may consider all mitigating factors in deciding whether administrative sanction is warranted; (14) provide the method for computing relevant time preiods under Part 24; (15) clarify certain procedural mechanisms where an oral hearing is not provided to a respondent, where a respondent requests Secretarial review or where the Department receives a reinstatement request; and (16) indicate that in a limited denial of participation proceeding, the Hearing Officer must consider rebuttal evidence submitted by the respondent as well as any mitigating circumstances.

DATE: Comments must be received by January 4, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 7th Street

[1] For other proposed rules and an interim final rule on nonprocurement debarment and suspension published by 25 departments and agencies, see the October 20, 1987 **Federal Register** (52 FR 39015–39062 and 39198–39204).

SW., Room 10276, Washington, DC 20410–0500. Commenters should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Assistant General Counsel for Inspector General and Administrative Proceedings, Department of Housing and Urban Development, Room 10266, 451 Seventh Street SW., Washington, DC 20410, (202) 755–7200. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Background

24 CFR Part 24 sets forth procedures relating to debarment, suspension and ineligibility of contractors and grantees with respect to participation in programs administered by the Department of Housing and Urban Development. HUD's procedures cover exclusion from both procurement and nonprocurement activities of the Department. A proposed comprehensive revision of Part 24 was published on July 8, 1980 (45 FR 46012). On July 1, 1982, the Office of Federal Procurement Policy of the Office of Management and Budget (OFPP) published Policy Letter 82–1, establishing criteria for suspension and debarment of Government contractors and subcontractors throughout the Executive Branch (47 FR 28854). Based on a review of the public comments received on the proposed rule published in December 1980 and the OFPP Policy Letter, HUD published a revised proposed rule on October 11, 1983 (48 FR 46072).

The Department received four public comments on the October 1983 proposed rule that were used in formulating a revised Part 24. However, because of the need to conform Part 24 to the "Department, Suspension and Ineligibility" procedures of the Federal Acquisition Regulation, 48 CFR Subpart 9.4, and issuance of the Office of Management and Budget's final Guidelines for Nonprocurement Debarment and Suspension (Guidelines), 52 FR 20360 (May 29, 1987), it was determined that the regulation should be published as an interim rather than as a final rule (see 52 FR 37112, October 2, 1987) so that the public could have an opportunity to comment.

This proposed rule is intended to incorporate the remaining provisions of the Guidelines that were not adopted in the October 1987 inerim rule. Becuase of the number of proposed changes, and for the sake of clarity to the reader, the full text of Part 24 is being set out. Since the interim rule will take effect following 30 calendar days of continuous session of Congress from its October 2, 1987 publication date, the reader is advised to refer to the interim rule when considering proposed changes discussed in this rule. Comments received by the Department on both the interim rule and this proposed rule will be used in formulating a final regulation on Part 24.

OMB Final Guidelines for Nonprocurement Debarment and Suspension (Guidelines)

Executive Order 12549, "Debarment and Suspension" was signed by President Reagan on February 18, 1986 and was published February 21, 1986 (51 FR 6370–71).

As part of the Administration's initiatives to curb fraud, waste, and abuse, the President's Council on Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The task force concluded, in its November 1982 report, that such a system was desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on Nonprocurement Suspension and Debarment. This task force recommended, in its November 1984 report, that a government-wide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established. (This is possibly the first step toward a comprehensive system, including both procurement and nonprocurement.)

The Task Force on Nonprocurement Suspension and Debarment considered many issues in developing the proposed guidelines. It concluded that the system should be as compatible as possible with the procurement debarment and suspension system included in the Federal Acquisition Regulation (FAR), while fully addressing the needs and concerns of nonprocurement programs. As a result, the Guidelines generally used the due process procedural structure of the FAR. Also, the proposed grounds for debarment and suspension were substantially similar to those in the FAR. The proposal combined the criteria common to the existing agency nonprocurement regulations with the criteria in the FAR.

On February 21, 1986, OMB published proposed guidelines covering the subjects indicated in section 6 of E.O. 12549, including: Coverage, government-wide criteria, and minimum due process procedures (51 FR 6372–79). These guidelines were prepared in regulation format as a mimimum model rule to facilitate their use by executive departments and agencies in preparing the agency regulations called for by section 3 of the Order.

OMB received 60 comments on the proposed Guidelines. All comments were provided to the Task Force on Nonprocurement Suspension and Debarment for consideration in preparing the final guidelines, which were published on May 29, 1987 (52 FR 20360–69).

Section 3 of E.O. 12549 directs Federal agencies to issue regulations governing implementation of the Order; the regulations must be consistent with these guidelines. In order to comply with these instructions, executive departments and agencies are required to essentially adopt the Guidelines—with the exception of two areas, "Coverage" and "Responsibilities of Federal Agencies." Public comments are especially invited on these two sections, which are discussed below.

The scope of the final OMB guidelines published on May 29, 1987 covered direct and indirect costs, but left to agency discretion whether to limit coverage (that is, the responsibility to check the consolidated list or certification) to items charged as direct costs. HUD has chosen to extend coverage in this proposed rule both to direct and to indirect costs. This is because the Department is not essentially a direct grant agency; instead, most participants in departmental programs receive Federal funds indirectly through State and local agencies, or are the beneficiaries of HUD insurance programs. By limiting coverage of Part 24 to direct costs only, the Department would be frustrating the purpose and intent of Executive Order 12549 to reduce fraud and abuse in Federal programs.

The participant certification requirement has also been expanded since publication of the final OMB guidelines. The guidelines allowed agency discretion in determining when agencies, in the financial assistance process, would require certification by nonprocurement participants. The Department is proposing to require certification by all nonprocurement participants receiving $25,000 or less. This is consistent with the small purchase threshold in the proposed government-wide common rule for grants to State and local governments, as well as with the Federal Acquisition Regulation (FAR). Nonprocurement participants receiving in excess of the

$25,000 threshold would be required to check the Consolidated List to verify that participants with whom they have dealings in covered transactions are not listed. The Department invites public comment, in particular, on the $25,000 monetary threshold and the combined certification/verification procedures described in this proposed rule, either of which may be reformulated under the final rule on Part 24.

Regulatory Changes

In its interim rule published on October 2, 1987 (52 FR 37112), they incorporated the following provisions of the final OMB Guidelines:

1. Conforming definitions of the terms "proposal", "subsidiary", "agency" and "notice";

2. The requirement that the grounds for debarment be included in the notice of sanction (§ 24.7(c)).

3. Notification to a participant or contractor that a suspension is for a temporary period pending the completion of an investigation, debarment or legal proceedings (§ 24.19(b));

4. Notification to the Department of Justice of an impending termination of suspension (§ 24.21(b));

5. Adoption of the Guidelines' standard for continuing agreements in existence at the time a person is suspended, debarred, declared ineligible or voluntarily excluded (§§ 24.8(c) and 24.20(c)). In addition, § 24.34(b) incorporated the Guidelines' standard for granting an exception to participants and contractors included on the HUD List. This exception would permit a debarred, suspended or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reasons for deviating from the policy established by Executive Order 12549.

6. Adoption of the Guidelines' standard on the scope of debarments, suspensions and limited denials of participation (§§ 24.11 and 24.27) by providing that these sanctions may include "any other affiliate of the participant or contractor that is specifically named and given written notice * * * and an opportunity to respond." The interim rule further provided that "[T]he burden of proving that a particular affiliate or organizational element is currently responsible and is not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is placed on the affiliate or organizational element.

In addition to the interim rule's changes, described above, the Department proposes in this rule to make the following conforming changes based on the OMB Guidelines:

1. Adding government-wide provisions that would encompass all tiers of nonprocurement participants. This change in effect would bring HUD nonprocurement sanctions in line with the government-wide provisions for procurement sanctions contained in the FAR (although the FAR currently limits government-wide effect to procurement contractors and federally approved subcontractors). In HUD's October 1987 interim rule, the Department indicated that it intended to carve an exception to the government-wide provisions for *agency-specific* sanctions. (The interim rule cited § 24.6(c)(6) as an example: That section provides that a material violation of a limited denial of participation—a HUD-specific sanction—constitutes grounds for imposing a debarment. On reconsideration, the Department has determined that such an exception would be contrary to the public interest, since it would permit an irresponsible participant to thwart the purpose of E.O. 12549 by participating in Federal programs not administered by HUD).

2. Providing, under proposed § 24.8, Effect of Debarment and Suspension, that debarred and suspended participants are also excluded from participating in covered transactions in the following capacities: (1) As an owner or partner holding a controlling interest; (2) as a director or officer of the participant; (3) as a principal investigator, project director, or other actor involved in management of the covered transaction; (4) as a provider of federally-required audit services; (5) in any other position, to the extent that the incumbent is responsible for the administration of Federal funds; or (6) in any other position charged as a direct cost under the covered transaction.

3. Establishing a comprehensive system for reporting to the General Services Administration of those participants who have been debarred, suspended, declared ineligible, voluntarily excluded, or subjected to limited denials of participation (see proposed § 24.31). (Exceptions granted by the Department under § 24.34 that would enable a sanctioned participant to continue business dealings with HUD would also be reported to GSA.)

4. Implementing a participant certification process that would require participants in covered transactions at or below the proposed small purchase threshold of $25,000 to certify whether they (or any person in specified capacities with respect to the participant or the particular covered transaction) have, in the preceding three years, been: (a) Debarred, suspended or declared ineligible; (b) formally proposed for debarment, with a final determination still pending; (c) voluntarily excluded from participation; or (d) indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § 24.6(a). Nonprocurement participants receiving in excess of the $25,000 threshold would be required to check the Consolidated List to verify that participants with whom they have dealings in covered transactions are not listed. Public comment is specifically invited on the $25,000 monetary threshold and the certification/verification procedure described above.

5. Abolishing the time limitation on the decision to order a debarment or suspension at §§ 24.5(b) and 24.17(b). The Department believes this three-year limitation to be inimical to the mandate of Executive Order 12549, and that its removal would be consistent with an aggressive policy of curtailing fraud, waste and abuse in Federal programs.

6. Expanding the definition of "legal proceedings" at § 24.4(q) to include proceedings by Federal, State, local or quasi-governments. This change would increase the instances in which the Department could suspend an individual "pending the completion of * * * legal proceedings" under § 24.21. (HUD currently defines this term to include only civil or criminal judicial proceedings in which the Federal government is a party.)

7. Modifying the language of § 24.6(c)(2), under causes for debarment, from "doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known that the person is debarred, suspended or otherwise excluded from participation in such transactions" to "where it is known or reasonably should have been known." This change would enable the Department to debar an individual under this subsection who could, under current rules, merely assert a lack of knowledge.

8. Abolishing the requirement that a shareholder have a 10% or greater equity interest before his or her seriously improper conduct can be imputed to a participant or contractor under § 24.11(b).

9. Permitting conduct to be imputed to a contractor or participant under § 24.11(b) either where the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor or participant, OR where the participant or

contractor knew, or should have known, or approved or acquiesced in, the conduct. Under the September 1987 interim rule, conduct may be imputed only when *both* factors are satisfied, making it more difficult for the Department to curb fraud and waste in HUD programs.

10. Amending the list of covered program transactions at § 24.3(a)(1) to include scholarships and fellowships. Providing additionally that awards, subawards, contracts, subcontracts and transactions at any tier that are charged as direct or indirect costs are covered program transactions. (Under current practice, only awards, subawards, contracts, subcontracts and transactions charged as *direct* costs are included as covered program transactions.)

11. Including various indicia of control at § 24.4(h) such as: Interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and establishment, following the debarment, suspension or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded participant.

12. Broadening the definition of "participant" at § 24.4(t) to include "any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction."

13. Specifying, in the definition of "suspension" at § 24.4(aa) that the sanction may be imposed to exclude a person from directly or indirectly participating in covered transactions for a temporary period, pending completion of an "investigation and such legal or debarment proceedings as may ensue." (Existing language reads "pending completion of an investigation or administrative or legal proceedings.")

14. Adding a provision at § 24.8(d), Effect of Debarment and Suspension, which provides that upon issuance of a notice of proposed debarment, the Department will not make any new awards to the respondent until a final debarment decision is rendered. HUD may waive this exclusion pending a debarment decision upon a written determination by the debarring official that identifies the reasons for the waiver action. In the absence of a waiver, the provisions of § 24.34, allowing exceptions for particular transactions, could be applied.

15. Clarifying, at § 24.5, Officials who may initiate debarment, that the Debarring Official may consider all mitigating factors in determining the seriousness of the offense, failure or inadequacy of performance, and in deciding whether administrative sanction is warranted.

16. Including at § 24.13, Hearing procedures, the relevant method for computing relevant time periods under Part 24. This provision is identical to the provision contained in Part 26 and was added for the sake of convenience to the reader.

17. Providing at § 24.13(b)(1), Right to hearing, that in those suspension cases where a hearing is not provided because of pending or contemplated legal proceedings by the Department of Justice, the Hearing Officer shall nevertheless: (a) Make a decision on the basis of all the information in the administrative record, including any submission made by the respondent; and (b) such decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the Hearing Officer extends this period for good cause.

18. Indicating at § 24.13(c), Standard of proof, that while the standard of proof in limited denial of participation cases is "adequate evidence", the Hearing Officer must consider any evidence offered by the respondent in opposition to HUD's proof, as well as any evidence of mitigating circumstances.

19. Including additional procedures at § 24.14(c) relating to Secretarial review. These procedures are identical to those provided in existing Part 24, but were inadvertently omitted from the interim rule published in October 1987.

20. Clarifying at § 24.15, requests for reinstatement, that the procedures for reinstatement are substantially similar to those involved in the initial proceedings and that reinstatement must be granted where it is in the best interests of the Government to do so. This language is included in the Department's existing Part 24, but was inadvertently omitted in the drafting of the October 1987 interim rule.

In addition to the regulatory changes described above, the Department wishes to clarify that the presumptions raised at § 24.4(s) (stating that notice, if undeliverable, shall be presumed to have been received by the addressee five days after being properly sent to the last address known by the agency) and § 24.11(b)(1) and (3) (that conduct may be imputed to a contractor or participant under certain circumstances and that "acceptance of the benefits derived from the conduct is presumptive evidence of such knowledge, approval or acquiescence") are *rebuttable* and that, in every instance, the respondent shall be afforded an opportunity to counter the presumption in the course of the administrative hearing.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterparises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since it will have applicability only to a very small percentage of the total number of entities which have dealings with the Department.

This rule was listed as item 920 in the Department's Semiannual Agenda of Regulations (published at 52 FR 40358, 40368) on October 26, 1987, under Executive Order 12291 and the Regulatory Flexibility Act.

This rule impacts upon the full range of loan, loan guarantee, grant, insurance, interstate land sales, and manufactured housing programs administered by the Department and that are designated Catalog of Federal Domestic Assistance program numbers 14.103–14.852.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies), Government procurement, Grant programs: housing and community development, Loan

programs: housing and community development.

Accordingly, the Department revises 24 CFR Part 24 to read as follows: (Parallel references to the OMB final Guidelines for Nonprocurement Debarment and Suspension are cited, where applicable)

PART 24—DEBARMENT, SUSPENSION AND LIMITED DENIAL OF PARTICIPATION

Subpart A—General

Sec.

Subpart B—Debarment

Subpart C—Suspension

Subpart D—Limited Denial of Participation

Subpart E—Lists of Excluded Participants and Contractors; Certification Requirement

Authority: Section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); Executive Order No. 12549, 3 CFR Part 189 (1986).

Subpart A—General

§ 24.1 (____.115) Policy.

In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. It is essential to the accomplishment of the Department's mission that grants, loans and contracts are awarded or insured by the Department and by those entities with whom it does business, and that participation in HUD financial assisance programs is limited, only to responsible contractors, grantees, and other participants. Accordingly, for the protection of the public interest, including the deterence of irresponsible conduct in Department programs, and not for punitive purposes, persons, firms, and other entities may be excluded from participation in HUD programs, and from contracts, subcontracts, and participation in covered transactions throughout the Executive Branch, in accordance with this part.

§ 24.2 (____.100) Scope.

(a) This part—

(1) Prescribes policies and procedures governing the debarment, suspension and limited denial of participation of contractors and participants for the causes given in §§ 24.6, 24.18 and 24.26.

(2) Provides for the listing of debarred, suspended, and ineligible contractors and participants; and

(3) Sets forth the consequences of this listing.

(b) Although this part does cover the listing of ineligible contractors and participants (§ 24.31) and the effect of this listing (§ 24.34), it does not prescribe policies and procedures governing declarations of ineligibility.

§ 24.3 (____.110) Applicability.

(a) The sanctions set forth in this part apply to participation as described below.

(1) *Covered program transactions.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary; or whether involvement is as a contractor or participant or as one receiving Federal funds directly or indirectly from a contractor or participant) include all programs funded or administered by a Federal agency, except as noted in paragraph (a)(3) of this section. These transactions include but are not limited to: Grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use and donation agreements; awards, subawards, contracts, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type (including subtier awards under awards that are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section. Persons may be subject to sanctions whether or not they were engaged in a Federal program at the time of the conduct on which the sanction is based, or whether they acted individually, on behalf of others, or in a private or public capacity.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, or insurance programs of the Department or in the interstate land sales or manufactured housing programs of the Department and those in business relationships with such participants in connection with such programs are also subject to the provisions of this part, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions under Executive Order 12549.* Sanctions taken under this part shall not preclude: Receipt of statutory entitlement or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including but not limited to contracts with, or grants made to, owners of occupants of real property in connection with eminent domain proceedings and relocation payments made to eligible displaced parties; incidental benefits derived from ordinary governmental operations; and participation in or benefits from other transactions where the application of this part would be prohibited by law.

(4) *Other exceptions.* (i) Sanctions under this part shall also not preclude the receipt of benefits from the sale of the personal residence of an excluded individual or the purchase of HUD-owned housing units offered for all-cash sale without qualification at public sales.

(ii) Sanctions against participants whose only involvement in HUD programs is as ultimate beneficiaries, such as subsidized tenants and subsidized mortgagees, may be taken only upon evidence of fraud or serious program abuse, unless the participant has otherwise been debarred or suspended by another Federal agency.

§ 24.3a Relationship to other HUD administrative sanction procedures.

(1) *Sanctions provided pursuant to contract provisions.* Nothing in this part shall impair or limit the right to impose any sanction provided for by contract, including guaranty agreements with the

Government National Mortgage Association.

(2) *Other departmental sanctions.* Where an office of the Department is required by statute, regulation, or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the requirements of the statute, regulation or Executive Order shall take precedence. These alternate procedures include, but are not limited to: Part 200 Previous Participation Review and Clearance procedures, Part 25 Mortgagee Review Board administrative actions, and Part 570 Community Development Block Grant corrective and remedial actions.

§ 24.4 (____.120) Definitions.

The following terms are used in this part:

(a) "Adequate evidence". Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) "Affiliates". Individuals or business concerns are affiliates if, directly or indirectly:

(1) Either one controls or can control the other; or

(2) A third individual or concern controls or can control both.

(c) "Agency". Any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies.

(d) "Benefits". Money or any other thing of value provided by, or realized because of, the Department. "Thing of value" includes insurance or guarantees of any kind.

(e) "Consolidated lists". Lists compiled, maintained, and distributed by the General Services Administration (GSA) (see § 24.31) containing the names and other information regarding contractors and participants debarred or suspended or declared ineligible by agencies under the procedures of this part as well as under other statutory or regulatory authority.

(f) "Contractor". Any individual or other legal entity that:

(1) Submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract or a subcontract under a Government contract; or

(2) Conducts business with the Government as an agent or representative of another contractor.

(g) "Control". The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or by other means. For purposes of actions under this part, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. This presumption may be rebutted by evidence. Other indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and establishment, following the debarment, suspension, or other exclusion of a contractor or participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded contractor or participant.

(h) "Conviction". A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(i) "Debarment". An action taken by a debarring official in accordance with Subpart B of this part to exclude a contractor from Government contracts or federally approved subcontracts under contracts or to exclude a person from directly or indirectly participating in covered transactions. "Debarment" also includes an action taken by any other Federal agency (as defined in 48 CFR 9.403) in accordance with agency regulations to exclude a contractor from Government contracts or federally approved subcontracts under contracts, or to exclude a participant from covered transactions for a reasonable, specified period. A contractor or other person so excluded is "debarred".

(j) "Debarring official". Any Assistant Secretary of HUD, the General Counsel of HUD or the President of the Government National Mortgage Association.

(k) "Grant". An award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

(l) "Grantee". The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

(m) "Hearing officer". An Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary, or by the Secretary's designee, to conduct proceedings under this part.

(n) "HUD List of Debarred, Suspended or Ineligible Contractors and Participants". A list compiled, maintained and distributed by the HUD Inspector General in accordance with § 24.32 containing the names of all participants and contractors debarred, suspended or determined to be ineligible in accordance with this part.

(o) "Indictment". Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(p) "Ineligible". Excluded from participation in covered transactions, agreements, or Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, or regulatory authority, other than the Department's debarment, suspension, or limited denial of participation procedures, such as the Davis-Bacon Act and its related statures and implementing regulations, the Service Contract Act, the Equal Opportunity Acts and Executive Orders, the Walsh-Healey Public Contracts Act, the Buy American Act, and the Environmental Protection Acts and Executive Orders.

(q) "Legal proceedings". Any criminal proceeding or civil judicial proceeding to which the Government is a party, or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(r) "Limited denial of participation". An action taken to exclude immediately from direct or indirect participation, or immediately to impose conditions on the direct or indirect participation, of any person in a program of the Department within a limited geographical area.

(s) "Notice". A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service or process, or any partner, officer, director, owner, of joint venturer of the party. Notice, if undeliverable, shall be presumed to have been received by the addressee five days after being properly sent to the last address known by the agency.

(t) "Participant". Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with Federal agency as an agent or representative of another participant. (For example, a participant in housing programs of another Federal agency or State government is a participant.) "Participant" encompasses any recipient of HUD benefits, either directly or indirectly, through non-Federal sources or other recipients, and includes grantees and subgrantees as well as loan recipients. "Participant" includes, but is not limited to, State and local governments, bonding companies, borrowers, builders, HUD contractors, principals in multifamily projects (as defined in 24 CFR Part 200, Subpart G), purchasers at sales of HUD-owned housing units offered with conditions for sale, purchasers of a property with a HUD-insured or Secretary-held mortgage, recipients under assistance agreements, ultimate beneficiaries of HUD programs, mortgagees, fee appraisers and inspectors, real estate agents and brokers, area management brokers, management and marketing agents, or persons employed by or in a business relationship with participants, such as accountants, consultants, investment bankers, architects, engineers, contrators with participants, and attorneys.

(u) "Person". Any individual, corporation, partnership, association, unit of government or legal entity, however organized, including any subsidiary of any of the foregoing.

(v) "Preponderance of the evidence". Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(w) "Proposal". A solicited or unsolictied bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

(x) "Respondent". A person against whom a debarment, suspension, or limited denial of participation action has been initiated.

(y) "Subsidiary". Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

(z) "Suspending official". Any Assistant Secretary of HUD, the General Counsel of HUD, or the President of the Government National Mortgage Association.

(aa) "Suspension". An action taken by a suspending official in accordance with Subpart C of this part immediately to exclude a contractor from Government contracts or federally approved subcontracts under contracts, or immediately to exclude a person from directly or indirectly participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is suspended.

(bb) "Ultimate beneficiaries". Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors such as those assisted under section 8 Housing Assistance Payments Contracts, section 236 Rental Assistance, or by Rent Supplement payments.

(cc) "Voluntary exclusion". A status of nonparticipation or limited participation in covered transactions assumed by a person under the terms of a settlement.

Subpart B—Debarment

§ 24.5 (____.300) General.

Any debarring official may initiate debarments. No debarment may be initiated against HUD-FHA approved mortgagees, however, without approval of the Mortgagee Review Board. A debarring official, acting in the public interest, may debar a participant or contractor for any cause set forth in § 24.6. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to initiate debarment shall be within the discretion of the debarring official and in the best interests of the Government. Likewise, all mitigating factors may be considered in determining the seriousness of the offense, failure or inadequacy of performance, and in deciding whether the administrative action is warranted.

§ 24.6 (____.305) Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 24.5 and 24.7 for:

(a) *Conviction.* Conviction of, or civil judgment for, any offense indicating a lack of business integrity or honesty which affects the present responsibility of a contractor or participant, including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of a contract or the terms of a public agreement so serious as to affect the present responsibility of a contractor or participant, including but not limited to:

(1) A willful or material failure to perform under one or more contracts or agreements; or

(2) A history of substantial noncompliance with the terms of one or more contracts or agreements.

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) *Other causes.* Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for in §24.6;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or where it reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a contractor or participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a contractor or participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment, suspension or limited denial of participation action;

(7) Failure to comply with Title VIII of the Civil Rights Act of 1968 or Executive Order 11063, HUD's Affirmative Fair Housing Marketing regulations or an Affirmative Fair Housing Plan;

(8) Violation of Title VI of the Civil Rights Act of 1964, section 109 of the

Housing and Community Development Act of 1973, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975;

(9) Violation of any law, regulation, or agreement relating to conflict of interest;

(10) Violation of any nondiscrimination provisions included in any agreement or contract;

(11) Violation of any law, regulation, or obligation relating to applications for financial assistance, insurance, or guarantees, or to the performance of obligations under an assistance award or conditional or final commitment to insure or guarantee;

(12) Making or causing to be made any false statement for the purpose of influencing in any way an action of the Government; or

(13) Any other cause determined by a debarring official to be of so serious or compelling a nature that it affects the present responsibility of a contractor or participant.

§ 24.7 (___ .310) Debarment procedures.

(a) *Decision-making process.* The debarment decision-making process shall be as informal as practicable, consistent with principles of fundamental fairness.

(b) *Notice of proposal to debar.* Debarment shall be initiated by advising the participant or contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being proposed;

(2) Of the reasons for the proposed debarment in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.6 for proposing debarment;

(4) Of the right to request in writing, within 30 days of receipt of the notice, a hearing (either oral or on the basis of any written submission made by the respondent) pursuant to § 24.13;

(5) Of the following potential effects of the sanction:

(i) For a participant, that except to the extent prohibited by law, the debarment shall be effective throughout the executive branch of the Federal Government. Except as provided in § 24.35, participants who are debarred or suspended under these provisions are excluded from participation in covered transactions of all agencies, including all participation, direct or indirect, in any HUD program, including any program funded, guaranteed, or insured by HUD, for the period of their debarment or suspension;

(ii) For a contractor, that in addition to exclusion from direct or indirect participation in HUD programs, the contractor will be excluded from receiving any Federal Government contract, and Federal agencies shall not solicit offers from, or award contracts or subcontracts to, the contractor unless the acquiring agency's head or designee determines that there is a compelling reason for such action.

(6) Of HUD's procedures governing debarment decision-making, including a statement that, if no response is made within 30 days, the decision will be made final.

(c) *Notice of debarring official's final decision.* If no request for hearing (either oral or on the basis of any written submission made by the respondent) is received within 30 days, the debarring official, or designee, shall give the participant or contractor and any affiliates prompt notice of the final decision to debar by certified mail, return receipt requested—

(1) Referring to the notice of proposed debarment;

(2) Specifying the reasons for debarment;

(3) Stating that the debarment is effective immediately; and

(4) Stating the period of debarment, including effective dates.

§ 24.8 (___ .200) Effect of debarment and suspension.

(a) *Contractors.* In addition to exclusion from direct or indirect participation in HUD programs, a contractor's debarment or suspension from procurement shall be effective throughout the Executive Branch of the Government, in accordance with 48 CFR 9.406–1(c), unless a contracting agency's head, or designee, states in writing the compelling reasons justifying continued business dealings between the agency and the contractor.

(b) *Participants.* (i) A participant's debarment or suspension extends to participation in all covered transactions throughout the Executive Branch, including direct or indirect participation in HUD programs. Such participation includes receipt of any direct or indirect benefit or financial assistance through grant or contractual arrangements; direct or indirect benefit or assistance in the form of loan guarantees or insurance; and award of procurement contracts, notwithstanding any quid pro quo given or whether the Department gives anything in return. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period;

(ii) In addition, participants who are debarred or suspended are excluded from participation in or under any covered transaction in any of the following capacities: As an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under the covered transaction.

(c) Notwithstanding the debarment, suspension, voluntary exclusion, or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(d) Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, HUD shall not make any new awards to the respondent. HUD may waive this exclusion pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of such a waiver, the provisions of § 24.34 allowing exceptions for particular transactions may be applied.

Agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, declared ineligible or under a voluntary exclusion, except as provided under § 24.34.

§ 24.9 (___.205) Voluntary exclusion.

A contractor or participant and an agency may enter into settlement agreement providing for the exclusion of the contractor or participant. Such exclusion shall be entered on the appropriate consolidated list (see Subpart E).

§ 24.10 (___.325) Period of debarment.

Debarment shall be for a period commensurate with the seriousness of the cause(s), generally not to exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Where the offense is willful and egregious, a longer term of debarment may be imposed, up to an indefinite period.

§ 24.11 (___.330) Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person or affiliate under this part

constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of agreements.

(2) The debarment action may include any other affiliate of the participant or contractor that is—

(i) Specifically named; and

(ii) Given written notice of the proposed debarment and an opportunity to respond as set forth in § 24.7(b).

An affiliate may be included in a debarment solely on the basis of its affiliation and regardless of its knowledge of or participation in the acts. The burden of proving that a particular affiliate or organizational element is currently responsible and is not controlled by the primary debarred party (or by an entity that itself is controlled by the primary debarred party) is placed on the affiliate or organizational element.

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to contractor or participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated in a business context with a contractor or participant may be imputed to the contractor or participant when:

(i) The conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor or participant; or

(ii) The participant or contractor knew, or should have known of, or approved or acquiesced in, the conduct.

Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a contractor or participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated in a business context with the contractor or participant who participated in, knew of, or had reason to know of the contractor's or participant's conduct.

(3) *Conduct of one contractor or participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one contractor or participant in a joint venture or similar arrangement may be imputed to other participating parties if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of the contractors or participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

§ 24.12 (____.310) Appeal procedures.

Within 30 days of receipt of a notice of proposed debarment, any participant or contractor, including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. If no appeal is filed within the time limit, the proposed decision to debar shall be final.

§ 24.13 (____.310) Hearing procedures.

(a) *General.* Hearings shall be governed by the procedures set forth at 24 CFR Part 26 (except as provided in (b)–(d) of this section and shall include § 26.16 regarding time computation. Specifically, § 26.16 provides that computation of any period of time prescribed or allowed by this part shall begin with the first business day following the day on which the act, event, development or default initiating the period of time occurred. When the last day of the period computed is a Saturday, Sunday, or national holiday, or other day on which the Department of Housing and Urban Development is closed, the period shall run until the end of the next following business day. Except when any prescribed or allowed period of time is seven days or less, each of the Saturdays, Sundays, and national holidays shall be included in the computation of the prescribed or allowed period.

(b) *Right to hearing.* A participant or contractor, including any affiliate, that has requested a hearing has the right to be heard before a Hearing Officer and to be represented by counsel as follows:

(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the participant or contractor may request an oral hearing before a hearing officer. Where debarment is based on a finding of civil rights noncompliance after a hearing, however, the hearing officer is bound by the finding of noncompliance reached in the prior hearing.

(2) Where an Assistant Attorney General or a U.S. Attorney advises in writing, and a hearing officer determines that a suspension is based on the same facts as pending or contemplated legal proceedings and that substantial interests of the Government in those proceedings would be prejudiced by a hearing, there shall be no right to a hearing under this part. However, the participant or contractors may submit documentary evidence and written briefs for consideration by the hearing officer. The hearing officer shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the hearing officer extends this period for good cause.

(3) Where the action is based solely upon an indictment or conviction, or upon suspension or debarment by another Federal Government agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

(c) *Standard of proof.* The cause for debarment must be established by a preponderance of the evidence. If the debarment is based upon a conviction, a civil judgment, or debarment by another Federal Government agency, the standard shall be deemed to have been met. The cause for suspension and limited denial of participation must be established by adequate evidence. For limited denials of participation, the hearing officer shall consider any evidence offered by respondent in opposition to HUD's proof as well as evidence of any mitigating circumstances. If the action is based upon an indictment or suspension by another Federal Government agency, the standard shall be deemed to have been met. If the limited denial of participation is based upon a limited denial of participation by another HUD regional or field office, the standard shall be deemed to have been met.

(d) *Consolidation of hearing.* Where a sanction under this part is accompanied or followed by another sanction under this part, the hearings may be consolidated.

§ 24.14 (____.310) Determination of hearing officer; review of determination.

(a) *Written determination.* After the participant or contractor has been afforded an opportunity to be heard, the hearing officer shall make a written determination on the evidence presented, including any evidence of mitigating circumstances. The hearing officer shall issue a determination in accordance with Part 26. If it is proposed that the sanction include an affiliate, the hearing officer shall rule specifically whether, and to what extent, the determination applies to the affiliate.

The hearing officer's determination shall be transmitted to all appealing parties by certified mail, return receipt requested.

(b) *Transmission of determination.* The hearing officer's determination also shall be transmitted promptly to the HUD official who invoked the administrative sanction, and to the Office of the General Counsel.

(c) *Finality and Secretarial review.* The hearing officer's determination shall be final unless, pursuant to 24 CFR Part 26, the Secretary, or designee, decides as a matter of discretion to review the finding of the hearing officer. Any party may request such a review in writing within 15 days of a receipt of the hearing officer's determination.

(d) Where a review is granted, the determination by the Secretary, or the Secretary's designee, shall be based on the record of the initial hearing and shall fully recite the evidentiary grounds upon which the Secretary's determination is made. Such determination shall be issued within 30 days from the decision to grant a review.

(e) Each determination shall become a part of the record.

(f) Notice of the Secretary's decision to review the hearing officer's determination and subsequent determination by the Secretary, or the Secretary's designee, shall be given in writing, signed by the Secretary or the Secretary's designee and transmitted by certified mail, return receipt requested.

§ 24.15 (____.325) Requests for reinstatement.

(a) *Grounds.* Request for reinstatement shall be made in writing, addressed to the official imposing the sanction, as follows:

(1) Immediately upon proof of:

(i) Discovery of new and material evidence not previously available;

(ii) Dismissal of the indictment or reversal of the conviction or judgment, or reversal of the suspension or debarment by another agency upon which HUD's sanction was based; or

(iii) Bona fide change in ownership or management sufficient to justify a finding of present responsibility.

(2) Not less than six months after the final determination of debarment or imposition or affirmation of the suspension or limited denial of participation, upon proof that causes for the sanction have been eliminated and upon certification that the requirements of applicable statutes and administrative rules and regulations are understood by the participants or contractor and will be followed in the future.

(b) *Procedures.* The request for reinstatement shall be forwarded by the official imposing the sanction to a hearing officer for a recommendation on reinstatement. The procedures for reinstatement are substantially similar to those invoked in the initial proceedings. In reaching the determination regarding reinstatement, the hearing officer must be satisfied that it is in the best interest of the Government to reinstate and also be persuaded from the assurances of the respondent that the respondent understands the requirements of the statutes and the administrative rules and regulations and will comply with them in the future. The hearing officer shall recommend to the official imposing the sanction whether or not reinstatement is warranted under the standards of paragraph (a) of this section.

§ 24.16 Settlement.

A debarring official may settle an administrative action under this part in the interest of the Government at any time.

Subpart C—Suspension

§ 24.17 (____.400) General.

Any suspending official may issue suspensions. No suspension may be issued against a HUD–FHA approved mortgagee, however, without approval of the Mortgagee Review Board. A suspending official, acting in the public interest, may suspend a participant or contractor for any cause set forth in § 24.18. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to suspend shall be within the discretion of the suspending official and in the best interests of the Government.

§ 24.18 (____.405) Causes for suspension.

(a) *Causes.* Suspension may be imposed in accordance with the provisions of §§ 24.17 and 24.19 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 24.6(a); or;

(2) That a cause for debarment under § 24.6 may exist.

(b) *Indictment.* Indictment shall constitute adequate evidence for the purpose of suspension actions.

(c) *Suspension.* Suspension by another Federal agency for any cause specified in paragraph (a) of this section shall constitute adequate evidence for a concurrent suspension.

§ 24.19 (____.410) Procedures.

(a) *Decision-making process.* The suspension decision-making process shall be as informal as practicable, consistent with principles of fundamental fairness. Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of an investigation and such legal or debarment proceedings as may ensue, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, the suspending official shall consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(b) *Notice of suspension.* Suspension shall be made effective by advising the participant or contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That suspension is being imposed;

(2) That suspension is based on an indictment or other adequate evidence that the participant or contractor has committed irregularities—

(i) of a serious nature in business dealings with the Government; or

(ii) Seriously reflecting on the propriety of further Government dealing with the participant or contractor.

Any such irregularities shall be described in terms sufficient to place the participant or contractor on notice without disclosing the Government's evidence;

(3) Of the cause(s) relied upon under § 24.18 for imposing suspension;

(4) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(5) Of the right to request within 30 days, in writing, a hearing (either oral or on the basis of any written submission made by the respondent) pursuant to § 24.13;

(6) Of the potential effect(s) of suspension as set forth in § 24.8.

(7) Of HUD's procedures governing suspension decision-making.

§ 24.20 (____.200) Effect of suspension.

The effect of suspension is set forth in § 24.8.

§ 24.21 (____.415) Period of suspension.

(a) All suspensions shall be for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue. A suspension shall become effective immediately upon issuance of the notice specified in § 24.19(b). In cases involving suspected violations of Federal law where prosecutive action has not been initiated by the

Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General or a United States Attorney requests, in writing, a continuance for an additional six months. In no event shall a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. The time limitations for suspension contained in this section may be waived by the affected party.

(b) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 24.22 (____.420) Scope of suspension.

The scope of a suspension shall be the same as the scope of a debarment (see § 24.11), except that the procedures of § 24.19 shall be used in imposing a suspension.

§ 24.23 (____.410) Appeal procedures.

Within 30 days of receipt of a notice of suspension, a participant or contractor, including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. If a hearing is requested, it shall be held in accordance with §§ 24.12 through 24.14.

§ 24.24 Settlements.

A suspending official may settle an administrative action under this part in the interest of the Government at any time.

Subpart D—Limited Denial of Participation

§ 24.25 General.

Official who may order a limited denial of participation. A regional administrator, office manager, or director of an Office of Indian Programs is authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except HUD-FHA approved mortgages. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

§ 24.26 Causes for a limited denial of participation.

(a) *Causes.* A limited denial of participation shall be based upon adequate evidence of any of the following causes:

(1) That approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a participant's or contractor's past performance in a HUD program;

(3) Failure of a participant or contractor to maintain prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) That requirements of an assistance agreement or contract will not be satisfied upon completion;

(6) Construction deficiencies in ongoing projects;

(7) Making a false certification in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.6(a);

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or a conditional or final commitment to insure or guarantee.

(10) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.

(11) Imposition of a limited denial of participation by any other HUD regional or field office.

(12) Debarment or suspension by another Federal agency for any cause substantially the same as provided in § 24.6.

(b) *Indictment.* Indictment shall constitute adequate evidence for the purpose of limited denial of participation actions.

(c) *Limited denial of participation.* Imposition of a limited denial of participation by any other HUD regional or field office shall constitute adequate evidence for a concurrent limited denial of participation.

§ 24.27 Period and scope of a limited denial of participation.

(a) *Generally.* A limited denial of participation extends to both direct and indirect participation in the program under which the cause arose, except that where it is based on an indictment, conviction or suspension or debarment by another agency it need not be based on offenses against HUD and it may apply to all programs. Such participation includes receipt of any direct or indirect benefit or financial assistance through grant or contractual arrangements; direct or indirect benefit or assistance in the form of loan guarantees or insurance; and award of procurement contracts, notwithstanding any quid pro quo given or whether the Department gives anything in return. The sanction may be imposed for a period not to exceed 12 months, is limited to HUD programs, and is effective only within the geographic jurisdiction of the office imposing it. For the purpose of this subpart, the term "program" may, in the discretion of the authorized official, include any or all of the functions within the jurisdiction of an Assistant Secretary.

(b) *Effectiveness.* This sanction shall be effective immediately upon being signed by the authorized official and shall remain effective up to 12 months. However, if the cause for the limited denial of participation is reason before the expiration of the 12-month period, the authorized official may terminate the sanction. The imposition of a limited denial of participation shall not affect the right of the Department to suspend or debar any party under this part.

(c) *Affiliates.* An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party is on the affiliate or organizational element.

§ 24.28 Notice.

(a) *Generally.* A limited denial of participation shall be initiated by advising a participant or contractor and any specifically named affiliate, by certified mail, return receipt requested—

(1) That the sanction is imposed on the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.26 for imposing the sanction;

(4) Of the right to request in writing within 30 days of receipt of the notice, a conference on the sanction;

(5) Of the Department's procedures governing limited denial of participation; and

(6) Of the potential effect of the sanction and the impact on the participant's or contractor's

participation in Departmental programs, specifying the program involved and the geographical area affected by the action.

(b) *Notification of action.* After 30 days, the official imposing the limited denial of participation shall notify the participation and compliance officer for Housing Programs if no conference has been requested. If a conference is requested within the 30-day period, no notice shall be given unless a decision to affirm all or a portion of the remaining period of exclusion is issued. The participation and compliance officer will be responsible for notifying all HUD field offices of sanctions imposed.

§ 24.29 Conference.

Upon receipt of a request for a conference, the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under § 24.30. Although the formal rules of procedure contained in 24 CFR Part 26 do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official, or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the limited denial of participation. If the decision is to affirm all or a portion of the remaining period of exclusion, the participant shall be advised of the right to request in writing, within 30 days of receipt of notice of the decision, a formal hearing. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

§ 24.30 Appeal.

Where the decision is to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. This request shall be filed within 15 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures set forth at §§ 24.12 through 24.14.

Subpart E—Lists of Excluded Participants and Contractors; Certification Requirement

§ 24.31 (____. 500) The consolidated lists.

(a) The Inspector General shall compile and transmit to the General Services Administration (GSA) a list of all contractors and participants debarred, suspended or declared ineligible by the Department. The list shall indicate:

(1) The names and addresses of all debarred, suspended, or ineligible contractors, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The name of the agency or other authority taking the action;

(3) The cause for the action or other statutory or regulatory authority;

(4) The scope of the action;

(5) The termination date for each listing;

(6) The name and telephone number of the point of contact for the action; and

(7) The DUNS No. for the contractor.

(b) The Inspector General shall compile and transmit to the General Services Administration (GSA) a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and this part and those who have been determined to be ineligible. The list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded and ineligible participants in alphabetical order, with cross references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause of the action or other statutory or regulatory authority;

(4) The effect of the action;

(5) Any termination date for each listing; and

(6) The agency name and telephone number of the point of contact for the action.

(c) The Inspector General shall:

(1) Notify GSA of the information required by paragraphs (a) and (b) of this section within five working days after the action becomes effective, unless an alternative schedule is agreed to by GSA;

(2) Notify GSA within five working days after modifying or rescinding an action, unless an alternative schedule is agreed to by GSA;

(3) Until February 18, 1989, provide GSA and OMB with information concerning all transactions involving participants in which HUD has granted exceptions under § 24.34(a)(3);

(4) Notify GSA of the names and addresses of offices within HUD that are to receive each consolidated list and the number of copies to be furnished to each recipient.

(5) In accordance with internal retention procedures, maintain records relating to each suspension or debarment action taken by the Department;

(6) Establish procedures to provide for the effective use of the list, to ensure that the Department does not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, or permit participation in covered transactions, except as provided in § 23.24; and

(7) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

§ 24.32 Establishment and maintenance of the HUD list of debarred, suspended and ineligible contractors and participants.

(a) *Maintenance of HUD lists.* The HUD Inspector General shall maintain of participants and contractors. All lists shall be kept current. Procedures for issuance of notices of additons and deletions shall be established by the Inspector General. Each suspending or debarring official under this part shall appoint a liaison officer responsible for providing the Office of Inspector General with current information. The Office of Inspector General shall, in cooperation with other offices of HUD, establish procedures for assuring the timely receipt of informatin relevant to updating the lists.

(b) *Information in the list.* The HUD list shall contain, at a minimum, the following information:

(1) An alphabetical listing of those persons against whom HUD has invoked administrative sanctions of debarrment or suspension, and those persons voluntarily excluded, with appropriate cross-references where more than one name is involved in a single action.

(2) The basis of authority for such action;

(3) The extent of the restrictions imposed, including their expiration date;

(4) The name of the office initiating the action; and

(5) Designation of whether debarred as a participant or contractor.

(c) *Distribution of the HUD list.* The Inspector General shall arrange for reproduction and distribution of the HUD list. The list shall be distributed among HUD employees and to others outside HUD whose duties require access to the list, as authorized by the Assistant Secretaries, Office Managers, Directors of Indian Housing Programs, and Regional Administrators. Distribution shall also be made upon

request. Procedures for submitting requests for information contained in the HUD list and distribution of such information shall be established by the Office of Inspector General. Names of persons on the HUD list shall be available upon request to that office.

§ 24.33 Classifications for entry on the HUD list.

Persons may be listed on the HUD list in accordance with the following classifications:

(a) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healy Public Contracts Act (41 U.S.C. 35, *et seq.*), or the Service Contract Act (41 U.S.C. 351 *et seq.*) as found by the Secretary of Labor to have violated any of the agreements or representations required by those Acts.

(b) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C. 276a–2(a)), as found by the Comptroller General to have violated that Act.

(c) Those listed by the Comptroller General as found by the Department of Labor to have failed to satisfy obligations arising out of a contract incorporating the nondiscrimination and affirmative action provisions of Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended (12 U.S.C. 793), or the Vietnam Era Veterans Readjustment Assistant Act of 1974, as amended (38 U.S.C. 2012), implementing regulations (41 CFR Chapter 60), and orders issued in connection therewith.

(d) Those listed by the Comptroller General in accordance with the provisions of 29 CFR 5.6(b) of the regulations of the Secretary of Labor as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or work hour provisions of the applicable statutes listed in 29 CFR 5.1.

(e) Those listed by the Director of the Office of Federal Contract Compliance on the Contract Ineligibility List because of noncompliance with the equal opportunity clause (41 CFR 60–1.3) or affirmative action clauses (41 CFR 60–250.4 and 60–741.4).

(f) Those persons debarred, suspended or voluntarily excluded by HUD in accordance with this part.

(g) Those determined by an Executive agency in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b(b)) to have failed to comply with the provisions of section 3(a) of that Act under a contract containing the specific provisions required by section 3(a) and made by the agency for the construction, alteration, or repair of any public building or public work.

§ 24.34 (___.200; ___.215) Effect of sanctions.

(a) *Consolidated list of contractors—*(1) *Debarred or suspended contractor.* Debarred or suspended contractors who are included on the consolidated list are excluded from receiving contracts, and HUD shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors, unless the Secretary or designee determines in writing that there is a compelling reason for such action.

(2) *Contractors listed as ineligible.* Contractors listed on the consolidated list as ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors except under the conditions and for the duration specified in the statute or regulation.

(b) *Consolidated list of participants—*(1) *Debarred or suspended participant.* Debarred or suspended participants who are included on the consolidated list are excluded from participating in all covered transactions of all agencies throughout the Executive Branch of the Federal Government for the period of their debarment or suspension, and HUD shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(2) HUD may grant an exception permitting a debarred, suspended or excluded person to participate in a particular transaction upon a written determination by the Secretary or the Secretary's authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently. Exceptions shall be reported in accordance with §24.31.

§ 24.35 (___.505) Certification.

(a) HUD shall require participants in covered transactions at or below the proposed small purchase threshold of $25,000 to certify whether the participant, or any person acting in a capacity listed in § 24.8(b)(ii) with respect to the participant or the particular covered transaction, is currently or within the preceding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation; or

(4) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in §24.6(a).

Adverse information on the certification need not necessarily result in denial of participation, unless the information indicates that the participant is currently suspended, debarred or otherwise ineligible. In all other cases, the information will be referred to the HUD program office responsible for administering the transaction for a determination on the effect of the information on the participant's eligibility.

(b) Participants receiving in excess of the proposed small purchase threshold of $25,000 are required to review the consolidated list to verify that participants with whom they have dealings in covered transactions are not listed.

§ 24.36 Retroactivity.

Limitations on participation in HUD programs proposed or imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of these regulations regardless of the date of the cause giving rise to the sanction.

Date: October 23, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87–25248 Filed 10–30–87; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 71008–7208]

Variety Denomination Requirements for Plant Patent Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend certain of the rules of practice applicable to the patenting of plants. Under the proposed rules of practice, an applicant for such a patent would, in addition to any requirements for obtaining a patent, also be required to record an identifying variety denomination for the plant. These proposed rules fulfill an

obligation imposed by the Convention of the International Union for the protection of New Plant Varieties (the UPOV Convention), to which the United States adheres.

DATES: Comments on the proposed rules must be submitted by January 8, 1988, to assure their consideration in formulating the rules put into effect. A public hearing will be held on January 15, 1988, beginning at 9:30 a.m., in the Commissioner's Conference Room, Crystal Plaza 3, the Patent and Trademark Office.

ADDRESSES: Address comments to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231. All comments received will be publicly available in the Patent and Trademark Office, Crystal Plaza 3, Arlington, Virginia, Room 11C28.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley D. Schlosser, Office of Legislation and International Affairs, by telephone at (703) 557–3065 or by mail addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The UPOV Convention became applicable to the United States on November 8, 1981, as a consequence of the President's exercise of authority to adhere to this international agreement. Under Articles 6 and 13 of the UPOV Convention, each plant variety for which protection is sought must be given a variety denomination and that denomination recorded ("registered" in the language of the Convention) at least by the time the patent is granted. It is left to each of the UPOV member states to determine how recordation is effected. For the United States, the issuance of a patent which includes the denomination of the variety would constitute recordation and registration for the purposes of compliance with UPOV Convention. The patent examining process would include consideration of the suitability for recordation of the proposed variety denomination.

Attention is called to two earlier Commissioner's Notices on this subject. The Notice of October 20, 1981 (46 FR 51426) stated that appropriate rules for the registration of variety denominations, as required by the UPOV Convention, would be issued. The Commissioner's Notice, published in the **Federal Register** on August 16, 1985, 50 FR 33062, proposed amendments to the Patent and Trademark Office's rules of practice to carry out this requirement. In light of public comments received, the earlier proposed rules are being withdrawn from consideration and replaced by these revised proposed rules. These would apply to plants patented under either 35 U.S.C. 101 or 161, but would not apply to any protection sought under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), administered by the United States Department of Agriculture.

These proposed rules, in accordance with the patent law requirements for providing a descriptive title for a patent application, would require the variety denomination proposed for recordation to be included in the title of the application. The denomination would be judged for recordability by the examiner assigned the application for examination, who would consult with appropriate trademark examination officials to determine if there exists a possibly conflicting trademark registration or application for registration.

The recordation of a variety denomination for purposes of compliance with UPOV Convention Article 13 is not to be understood as conveying any legal rights in that denomination. Recordation does no more than establish a prima facie case that can be asserted as evidence of the possible generic nature of the variety denomination, if genericness is not already established by its usage in the commercial market, advertising or publication.

Under the proposed rules, the Patent and Trademark Office in examining the recordability of variety denominations will, in addition to its trademark records, utilize the Office's compilation of denominations obtained from horticultural, agricultural, floral and other professional societies, national breeders' rights offices, the UPOV Union's Secretariat, standard references and other available sources.

Article 13 of the UPOV Convention requires that the variety denomination must enable the plant variety to be identified, that the denomination not consist solely of numbers except if this is shown to be an established practice for designating plant varieties, and that the denomination not be liable to mislead or cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. No specific naming system is required by the Article. While a portion of the consuming public and others might prefer plant variety names conforming to the International Code of Nomenclature for Cultivated Plants or the UPOV Guidelines, common usage, code systems or other ways of identifying plants cannot be ignored.

The Patent and Trademark Office would accept for recordation a variety denomination complying with the requirements of the UPOV Convention's Articles 13(2) and 13(4). A number of variety denomination systems currently in use, such as the system described in the 1980 revision of the International Code of Nomenclature for Cultivated Plants, the UPOV Guidelines and various code systems may also meet these requirements. Sexually reproduced varieties could be named in compliance with the requirements of the Federal Seed Act.

In the event the examiner does not approve a proposed variety denomination for recordation, the applicant could petition the Commissioner for approval. Thus, the examination and approval of variety denominations will be handled in the same way as other procedural and administrative requirements not relating to the merits of the invention, such as the requirement to provide an abstract of the disclosure or the requirement to provide a title. A final refusal by the Commissioner on petition would require submission of another proposed denomination for recordation.

The petition to the Commissioner will be subject to a fee and the other requirements relating to petitions. The Commissioner may in appropriate cases delegate to the Assistant Commissioner for Trademarks or other appropriate trademark officials the decision of such petitions, under 37 CFR 1.181(g).

The UPOV Convention requires the applicant to identify the patented variety by the same variety denomination (or a translation thereof) in all UPOV member states. A different denomination may be recorded in a particular member state, however, in cases where the denomination registered in another member state is unsuitable for business or other reasons. An applicant may during the course of examination be required to inform the Office of any other denomination by which the variety is known.

While these rules provide for the recordation of variety denominations, they recognize at the same time that, in cases of conflict, previously established proprietary rights are paramount. Recordation is in legal effect, therefore, no more than publication of a denomination which is or may become the generic name of a plant variety.

Trademark owners, owners of other proprietary rights and patent applicants share a common interest in knowing as early as possible if a variety denomination proposed for recordation possibly conflicts with a trademark or other proprietary rights. Accordingly, each denomination proposed for recordation, along with the genus and

species to which the variety belongs, shall be published in the *Official Gazette* as soon as reasonably possible after receipt of the application in the Office. The Commissioner has determined that publication of such information constitutes special circumstances under 35 U.S.C. 122.

The public may provide information to the Office concerning the recordability of a proposed denomination. Such information would be entered in the official file wrapper of the application and be available to the examiner. Such information shall be called to the attention of the applicant by the Office.

Also, the *Official Gazette* would list newly recorded denominations in United States patents in order for trademark owners to assert their rights in appropriate cases through private negotiations or judicially, as they may now do in trademark cases. Proceedings in the Office in regard to the registration of variety denominations, however, will be conducted ex parte.

Under the proposed rules, each applicant would be required to specify in an application for protection of a plant variety the date of first use of the denomination if used prior to filing of the patent application, or later to provide information about the date of first commercial use during pendency of the application. In cases of conflict between a trademark and a proposed variety denomination, the variety denomination will not be accepted for recordation unless its first commercial use clearly antedates another's established rights.

If a patentee learns of a conflict between a trademark and the recorded variety denomination after issuance of the patent, the patentee in order to resolve the conflict will be permitted to record a different denomination by means of the Certificate of Correction procedure. Also, a variety denomination found after issuance of a patent to be commercially unsuitable or ill-advised could be changed in a similar manner.

The Office now permits plants and plant varieties to be patented both specifically and broadly under patent 35 U.S.C. 101. In some cases, however, claims in an application will not be limited to a specific variety. These proposed rules would apply only to applications where a specific variety or varieties are claimed. Only these need be identified by a variety denomination, except where the number of varieties involved makes this impractical. In such a case, each claim directed to a specific variety would include its variety denomination, but these variety denominations could be omitted from the title of the patent. Variety denominations would not be required for microorganisms or microscopic plant parts.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This rule contains a collection of information requirements subject to the Paperwork Reduction Act. This collection of information requirements has been cleared by OMB under control no. 0651–0011.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The variety denomination requirement will not impose extra work on patent applicants (whether small or large businesses or individuals). The rules will help avoid burdensome and expensive litigation over trademark rights.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents.

For the reasons set out in the preamble, 37 CFR Part 1 is proposed to be amended by revising §§ 1.71, 1.163, 1.168 and 1.17 as set forth below. All proposed additions are printed between arrows.

PART I—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.17 is proposed to be amended by adding the following items in numerical order to the list in paragraph (h) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) * * *

►§ 1.168(d) For petitioning the Commissioner to record a plant variety denomination . . .

►§ 1.168(g) For petitioning the Commissioner to record a substitute plant variety denomination . . .◄

3. Section 1.72 is proposed to be amended by adding the following paragraph:

§ 1.72 Title and abstract.

* * * * *

►(c) In the case of an application for the patenting of a plant variety under the provisions of 35 U.S.C. 101 or 161, the title of the application must include a variety denomination for the specific new variety claimed, except as provided for in § 1.168(b). The granting of the patent will be deemed the recordation of the variety denomination for purposes of compliance with Article 13 of the International Convention for the Protection of New Varieties of Plants, as revised on October 23, 1978.◄

4. A new § 1.168 is proposed to be added, to read as follows:

►§ 1.168 Variety denomination, submission to the Office, examination.

(a) The variety denomination submitted by the patent applicant under § 1.72 will be examined for compliance with the International Convention for the Protection of New Varieties of Plants. Specifically, the denomination:

(1) Must enable the plant variety to be identified;

(2) Must not be likely to cause confusion, to cause mistake or to deceive concerning the characteristics, value or identity of the plant variety or the identity of the breeder;

(3) Must not consist solely of numbers except if this is an established practice for designating plant varieties; and

(4) Must not be likely to cause confusion or mistake or to deceive as to any prior right of a third party, and shall not affect prior rights of third parties.

(b) If a proposed variety denomination is not included as part of the title of the application, when filed, the examiner shall set a period of not less than thirty days to provide a variety denomination. If a plurality of plant varieties are claimed, which make it impractical to include each variety denomination in the title of the application, each claim directed to a specific plant variety shall instead include the denomination of the

claimed plant variety. In cases where no specific plant variety is claimed, for example, a patent directed to the improvement of a plant species, the denomination requirement applicable to the patenting of a plant variety or varieties will be waived.

(c) If the examiner determines that a proposed variety denomination is not suitable for recordation, the examiner shall refuse recordation thereof and shall set forth in an Office action the reasons for such refusal. An applicant disagreeing with the reasons for such refusal may request reconsideration and withdrawal of the refusal, giving the reasons therefor. If the examiner's refusal to record a proposed variety denomination is repeated and made final, the examiner shall at the same time require the applicant to propose another variety denomination for recordation.

(d) After a final requirement by the examiner for submission of a proposed new variety denomination, the applicant, in addition to making any response due on the remainder of the action, may in lieu of proposing another variety denomination petition the Commissioner for review of the examiner's holding, upon payment of the fee set forth in § 1.17(h).

(e) The applicant is required to submit for recordation the same variety denomination (or, if not in English, a translation or transliteration thereof) as that previously registered or recorded, or proposed for registration in an earlier filed application for protection of the same variety in another member state of the International Union for the Protection of New Varieties of Plants. The applicant may submit another denomination for recordation, however, upon a showing satisfactory to the examiner as to why the denomination originally submitted or registered in another member state of the said Union is unsuitable for recordation in the United States. During pendency of an application, the examiner may require the applicant to provide information regarding all denominations for the same variety registered or proposed for registration in other member states of the said Union before the application was filed in the United States.

(f) The applicant shall indicate in the application the date of first commercial use in the United States if any, of the variety denomination proposed for recordation; or, if not commercially used prior to filing of the application, indicate during pendency of the application when the denomination has first been commercially used in this country. No variety denomination will be recorded if first commercially used after the establishment of third party proprietary rights to the denomination.

(g) A patentee in order to avoid a conflict between a recorded variety denomination and a trademark or other proprietary right, or where the recorded variety denomination is likely to be confused with another, or where business or marketing considerations dictate, may propose for recordation a substitute variety denomination for that already recorded. Such a proposal shall be in the form of a petition to the Commissioner together with the fee set forth in § 1.17(h). The proposed substitute denomination will be examined in the same manner as the denomination originally recorded, and upon recordation shall be promptly published in the *Official Gazette*. A Certificate of Correction indicating such substitute denomination shall be issued for the patent. If the patent has been assigned, only the assignee of record may apply for recordation of a substitute denomination.

(h) The Commissioner shall upon its receipt in the Office promptly publish in the *Official Gazette* each variety denomination proposed for recordation and the genus and species of the plant involved. Correspondence from the public objecting to the recordation of such denomination, if accompanied by reasons therefor, will be placed in the official file and considered by the examiner in an ex parte manner. An objection to recordation may be based on an earlier recorded or unrecorded variety denomination, a registered or common law trademark, a trade name or trade indicia, or other alleged prior right timely called to the Office's attention. The applicant shall be notified by the Office of the receipt of such correspondence. The secrecy of any pending application will be preserved in accordance with 35 U.S.C. 122.◄

Date: September 18, 1987.

Rene Tegtmeyer,

Assistant Commissioner for Patents.

[FR Doc. 87-25294 Filed 10-30-87; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3277-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a relaxation from existing emission limits and is in the form of an alternative emission control plan (bubble) for volatile organic compounds (VOC) involving the Morgan Adhesives Company (Morgan Adhesives) facility's 12 paper coating lines (K001–K012) and one vinyl casting line (K013). This facility is located in Summit County, Ohio, an area designated as nonattainment for ozone.

USEPA today is proposing to disapprove this SIP revision because it does not represent the application of reasonably available control technology (RACT), nor does it comply with USEPA's Emissions Trading Policy.

DATES: Comments on this revision and on the proposed USEPA action must be received by December 2, 1987.

ADDRESSES: Copies of the SIP revision request and technical support documents are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

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

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On March 18, 1983, the Ohio Environmental Protection Agency (OEPA) submitted a proposed site-specific VOC revision to its ozone SIP for Morgan Adhesives' 12 paper coating lines (K001–K012) and 1 vinyl casting line (K013), which are located at Morgan Adhesives' facility in Summit County, Ohio. The proposed revision consists of a bubble for all 13 lines, and is based on RACT[1] for

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and

Continued

Morgan Adhesives' paper coating lines. The proposal is not approvable because it does not satisfy the emissions trading policy, the allowable emissions are determined on a volume (as opposed to a solids) basis and as such are not consistent with RACT, and RACT has not been established for the vinyl casting line.

I. Emission Limits

A. Paper Coating Lines

Under the existing federally approved SIP, each paper coating line (K001–K012) at Morgan Adhesives is subject to the control requirement contained in OAC Rule 3745–21–09(F) of 2.9 pounds of VOC/gallon of coating. OAC Rule 3745–21–04(C)(5) requires final compliance by April 1, 1982.

B. Vinyl Casting Line

The vinyl casting line (K013) at Morgan Adhesives is currently subject to the control requirements contained in OAC Rule 3745–21–07(G), which limits the "photochemically reactive" solvent content in coatings. This rule, however, does not require RACT level VOC emission limitations for surface coating operations. Final compliance with the rule was required by April 15, 1974. The paper coating line (K012) is also permitted to operate as a vinyl casting line.

II. Alternative Emission Control Program (Bubble)

A. USEPA's Emissions Trading Policy

On April 7, 1982 (47 FR 15076), the USEPA issued a proposed Emissions Trading Policy Statement (ETPS) which sets forth general principles for the creation, banking and use of emission reduction credits for Bubbles. This statement indicated that it is the policy of USEPA to encourage use of emissions trades to achieve more flexible, rapid and efficient attainment of national ambient air quality standards (NAAQS). It describes emissions trading, sets out general principles that USEPA will use to evaluate emissions trades under the Clean Air Act, and expands opportunities for States and industry to use these less costly control approaches. The April 7, 1982, notice noted that until USEPA took final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed statement. On December 4, 1986 (51 FR 43814), USEPA issued its final ETPS, which contains the criteria by which emission trades will be evaluated.

A source may secure emission reduction credits by meeting each of the applicable requirements of the final ETPS. Only reductions which are surplus, enforceable, permanent and quantifiable can qualify as an emission reduction credit. In nonattainment areas that lack an approved demonstration of primary NAAQS (e.g., Summit County), surplus reductions consist of an emission reduction from each source's baseline equivalent to the lowest of actual, SIP-allowable, or RACT-allowable emissions, plus an additional emissions reduction, generally of at least 20 percent.[2] Use of past shutdowns, curtailments or other reductions which occurred before application for credit is essentially eliminated from baseline calculations.

A source's baseline emissions for bubble purposes is determined from the lower of actual, SIP-allowable, or RACT-allowable values for each of three baseline factors. These three baseline factors are described in the following paragraph. Actual values for these factors are normally determined based upon the source's average historical values for the factors for the 2-year period preceding the source's application to trade emission reduction credits.

For bubbles, a source's "baseline" emissions are equal to the product of its: (1) *Emission rate* ("ER"), specified in terms of mass emissions per unit of production or throughput (e.g., pounds of sulfur dioxide (SO_2) per million British Thermal Units (BTU) or pounds of VOC per weight of solids applied); (2) *average hourly capacity utilization* ("CU") (e.g., millions of BTU per hour or weight of solids applied per hour); and (3) *number of hours of operation* ("H") during the relevant time period. In sum, baseline emissions $=ER \times CU \times H$. Net baseline emissions for a bubble are the sum of the baseline emissions of all sources involved in the trade.

B. Bubble Evaluation

The proposed bubble VOC emission limitation is specified within the special terms and conditions of the variances for coating lines K001(B), K002(C), K003(D), K006(G), K007(H), K008(J), K009(K), and K012(R) and the permits to operate for coating lines K004(E), K005(F), K010(M), K011(N) and K013(V). This limitation is presented below.

The allowable daily emission limitation (A_d) for VOC from coating lines B through H, J, K, M, N, R and V shall be determined by the following equation:

$$A_d = \sum_{i=1}^{n} V_i L_i$$

where

A_d = pounds of volatile organic compound (VOC) emissions allowed for the day;

V = volume of surface coating applied for the day, in gallons (excluding water);

L = 2.9 pounds of VOC per gallon of coating applied, excluding water, for paper coatings, 3.7 pounds of VOC per gallon of coating applied, excluding water, for urethane casting coatings; and 6.0 pounds of VOC per gallon of coating applied, excluding water, for vinyl casting coatings;

i = subscript denoting a specific surface coating employed; and

n = total number of surface coatings employed.

Table A, below, was provided by OEPA and is the only emission information submitted with this proposed SIP revision. This table, which is based upon 1975 production levels, shows that 3404.6 tons VOC per year would be allowed from paper coaters under this bubble, as proposed (calculated in a volume basis). This table also shows that only 1309 tons of VOC per year would be allowed (based upon 1975 production levels) if the calculations were performed on a solids basis as required by USEPA policy. Therefore, the allowable emissions proposed for the paper coaters under the bubble are 2.6 times the emissions that would be allowed if the calculations were performed on a solids basis. Approving this proposed revision using volume-based calculations would result in a relaxation of 2,096 tons per year from the current SIP-allowable emissions for paper coaters. The requirement that equivalency calculations be on a solids basis is contained in USEPA's May 5, 1980, memorandum from Richard Rhoads, former Director of the Control Programs Development Division. In addition, the Technical Issues Document (of the final ETPS) states that VOC trading must require that surface coating emissions be calculated on a solids applied basis.

Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] It should be noted that this is not a "pending bubble" under the final ETPS because it is inadequate under the 1982 proposed bubble policy (e.g., Due to the use of volume applied basis in the Calculation of allowable emissions). USEPA Region V, notified OEPA that this proposed SIP revision is not approvable in letter dated May 23, 1983, September 1, 1983 and February 28, 1985.

TABLE A [3]

	Hydrocarbon emissions (tons/per yr.)		
	1975 baseline	RACT on solid basis	Revision on volume basis
Original SIP (includes paper coating lines and vinyl casting line	7093		4207
Corrected SIP:			
(12) Paper coating lines	5648.5	1309.0	3404.6
		[1] (1202.0)	[1] (3339.7)
(1) Vinyl casting line	756.9	[2] 756.9	[2] 756.9
13 Coating lines bubble being proposed as facility-specific RACT revision to SIP	6405.4	2065.9	4161.5

[1] Adjusted value based on maintaining the existing VOC content for any coating meterial which has a VOC content already below the RACT presumptive norm of 2.9 pounds of VOC per gallon, excluding water.

[2] RACT for the vinyl casting line is based on maintaining the existing VOC content for the current coating materials which comply with the requirements of paragraph (G) of OAC rule 3745-21-07. (See the discussion concerning RACT below.)

[3] Table A is provided for informational purposes only and USEPA is not using this infomation to detemine the approvability of this bubble.

(Note: The above hydrocarbon emissions are based on 1975 production and do not include any growth projections.)

Moreover, this bubble is not approvable since this proposed revision is not based upon baseline levels which reflect the lower of actual or SIP allowable or RACT allowable emissions for each line, which is a requirement of the ETPS.

The State submittal indicates that certain emission reduction technologies may have been put in place prior to the application for the bubble. If so, credit cannot be given for such emission reductions. In addition, this bubble does not provide production information for the 2 years prior to submittal of this bubble. This information is required by the ETPS. In this case, production information for the 2-year period of 1978 and 1979 would be required to support the bubble. In addition, as discussed below, RACT-allowable emissions for vinyl casting lines has not been established.

In addition, this revision does not provide an additional 20 percent emission reduction credit. The ETPS requires that bubbles in areas that lack approved attainment demonstrations produce a net reduction in emissions, generally by generating at least an additional 20 percent emission reduction credit (over what would otherwise be required). Akron (Summit County) currently lacks an approved attainment demonstration.

III. Reasonably Available Control Technology

A USEPA's RACT Policy

USEPA's May 5, 1980, policy memorandum, subject "Procedure to Calculate Equivalency with the CTG Recommendations for Surface Coating" from Richard Rhoads, Director of the Control Programs Development, Division Directors, contains USEPA's policy on VOC equivalency calculations. This policy requires all VOC equivalency calculations be done on a solids applied basis.

B. RACT Evaluation

The proposed daily weighted average, volume-based emission limit cannot be considered to be RACT, without additional technical support. Although OEPA believes that the emission limits represent a facility-specific RACT determination in the form of a bubble control strategy, documentation has not been provided which supports the proposed limits as RACT. On October 6, 1986, USEPA informed OEPA that USEPA was not aware of any information that would support the proposed limits as RACT. OEPA should submit such information if it exists. In addition, a RACT level emission limitation and supporting technical information must be established for the vinyl casting line, which is indicated in Table A to be a major non-control techniques guidelines source. Finally, any RACT equivalency demonstrations which OEPA and Morgan Adhesives may develop in support of this revision must be performed consistent with the Agency's policy on VOC equivalence calculations contained in a May 5, 1980, memorandum from Richard Rhoads, Director of the Control Programs Development Division, to the Regional Air and Harzardous Waste Division Directors. This would require that all calculations be done on a solids applied basis.

SIP Deficiency Morgan Adhesives

Under USEPA's July 29, 1983, SIP revision policy memorandum entitled "Source Specific SIP Revisions" from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, sources which are located in areas lacking current federally approved ozone attainment demonstrations cannot be considered for relaxations, until the SIP has been revised to demonstrate attainment and maintenance of the national ambient air quality standard (NAAOS) for ozone. In addition, the State must demonstrate that Reasonable Further Progress (RFP) will be maintained in the area. An attainment demonstration for the Akron area (which includes Morgan Adhesives) was submitted to USEPA on April 11, 1986, and is currently under review. However, at the present time Akron lacks a federally approved demonstration of attainment; and the proposed SIP revision would result in a relaxation of 2,096 tons per year from the SIP allowable for paper coaters. Therefore, approval of the Morgan Adhesives revision in its present form is not possible for all the reasons discussed above.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before December 27, 1987, will be considered in USEPA's final rulemaking. All comments will be available for inspection during during normal business hours at the Region V office.

Under 5 U.S.C. 605(b), I cerify that this proposed disapproval will not have a significant economic impact on a substantial number of small entities because it applies to only one firm, Morgan Adhesives.

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

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

Dated: December 31, 1986.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register on October 27, 1987.

[FR Doc. 87-25201 Filed 10-30-87; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 52, No. 211
Monday, November 2, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Monday, November 16, 1987. The meeting will be held in Room M09 at the Old Post Office, 1100 Pennsylvania Ave., NW., Washington, DC.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the Chairman of the National Conference of State Historic Preservation Officers; a Governor, a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Report
II. Executive Director's Report
III. Task Force Reports
IV. Legislation
V. New Business
VI. Adjourn

Note:—The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–786–0503 at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW. #809, Washington, DC 20004.

Robert D. Bush,

Executive Director.

Date: October 27, 1987.

[FR Doc. 87–25295 Filed 10–30–87; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date and Time: December 1, 1987, 8:30 a.m.–4:30 p.m.

Place: U.S. Department of Agriculture, Room 244–W, Administration Building, Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. Edward M. Wilson, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 223 Justin Smith Morrill Building, Washington, DC 20251–2200, Telephone: 202/447–4587.

Done at Washington, DC, this 22nd day of October 1987.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 87–25326 Filed 10–30–87; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Designation Renewal of the Aberdeen Agency (SD), McGregor Agency (IA), and State of Missouri (MO)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Aberdeen Grain Inspection, Inc. (Aberdeen), McGregor Grain Inspection and Weighing Corporation, Inc. (McGregor), and Missouri Department of Agriculture (Missouri), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: December 1, 1987.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Aberdeen's, McGregor's, and Missouri's designations terminate on November 30, 1987, and requested applications for official agency designation to provide official services within specified geographic areas in the June 1, 1987, **Federal Register** (52 FR 20434). Applications were to be postmarked by July 1, 1987. Aberdeen, McGregor, and Missouri were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant names in the August 3, 1987, **Federal Register** (52 FR 28738) and requested comments on the designation renewal of Aberdeen, McGregor, and Missouri. Comments were to be postmarked by September 17, 1987; none were received.

The Service evaluated all available information regarding the designation

criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Aberdeen, McGregor, and Missouri are able to provide official services in the geographic area for which the Service is renewing their designations. Effective December 1, 1987, and terminating November 30, 1990, Aberdeen, McGregor, and Missouri will provide official inspection services in their entire specified geographic area, previously described in the June 1 Federal Register.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agencies at the following addresses: Aberdeen Grain Inspection, Inc., 15 S. Dakota Street, P.O. Box 842, Aberdeen, SD 57401; McGregor Grain Inspection and Weighing Corporation, Inc., 125 B Street, P.O. Box 201, McGregor, IA 52157; Missouri Department of Agriculture, Department of Agriculture Building, 1616 Missouri Boulevard, P.O. Box 630, Jefferson City, MO 65102.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: October 20, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87–25235 Filed 10–30–87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Lincoln (NE) and Omaha (NE) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Lincoln Inspection Service, Inc. (Lincoln), and Omaha Grain Inspection Service, Inc. (Omaha).

DATE: Applications to be postmarked on or before December 2, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Lincoln, located at 505 Garfield Street, P.O. Box 2724, Station B, Lincoln, NE 68502; and Omaha, located at 2525 South 13th Street, Omaha, NE 68102, were each designated under the Act as an official agency to provide inspection functions on May 1, 1985.

Each official agency's designation terminates on April 30, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Lincoln, in the States of Iowa and Nebraska, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North (in Nebraska) by the northern York, Seward, and Lancaster County lines; the northern Cass County line east to the Missouri River; the Missouri River south to U.S. Route 34; (in Iowa) U.S. Route 34 east to Interstate 29;

Bounded on the East by Interstate 29 south to the Fremont County line; the northern Fremont and Page County lines; the eastern Page County line south to the Iowa-Missouri State line; the Iowa-Missouri State line west to the Missouri River; the Missouri River south-southeast to the Nebraska-Kansas State line;

Bounded on the South by the Nebraska-Kansas State line west to County Road 1 mile west of U.S. Route 81; and

Bounded on the West (in Nebraska) by County Road 1 mile west of U.S. Route 81 north to State Highway 8; State Highway 8 east to U.S. Route 81; U.S. Route 81 north to the Thayer County line; the northern Thayer County line east; the western Saline County line; the southern and western York County lines.

Exceptions to the assigned geographic area are the following locations inside Lincoln's area which have been and will continue to be serviced by Omaha Grain Inspection Service, Inc.: Fremont Company Coop, McPaul, Fremont County, Iowa; and Lincoln Grain, Murray, Cass County, Nebraska.

The geographic area presently assigned to Omaha, in the States of Iowa and Nebraska, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by Nebraska State Route 91 from the western Washington County line east to U.S. Route 30; U.S. Route 30 east to the Missouri River; the Missouri River north to Iowa State Route 175; Iowa State Route 175 east to Iowa State Route 37; Iowa State Route 37 southeast to the eastern Monona County line;

Bounded on the East by the eastern Monona County line; the southern Monona County line west to Iowa State Route 183; Iowa State Route 183 south to the Pottawattamie County line; the northern and eastern Pottawattamie County lines; the southern Pottawattamie County line west to M47; M47 south to Iowa State Route 48; Iowa State Route 48 south to the Montgomery County line;

Bounded on the South by the southern Montgomery County line; the southern Mills County line west to Interstate 29; Interstate 29 north to U.S. Route 34; U.S. Route 34 west to the Missouri River; the Missouri River north to the Sarpy County line (in Nebraska); the southern Sarpy County line; the southern Saunders County line west to U.S. Route 77; and

Bounded on the West by U.S. Route 77 north to the Platte River; the Platte River Southeast to the Douglas County line; the northern Douglas County line east; the western Washington County line northwest to Nebraska State Route 91.

The following locations, outside of the above contiguous geographic area are part of this geographic area assignment: Murren Grain, Elliot, Montgomery County, Iowa; Hemphill Feed & Grain, and Hansen Feed & Grain, both in Griswold, Cass County, Iowa; Fremont Company Coop, McPaul, Fremont County, Iowa; Lincoln Grain, Murray, Cass County, Nebraska; Farmers Coop Business Assn., Rising City, Butler County, Nebraska; and Farmers Coop Business Assn., Shelby, Polk County, Nebraska.

Exceptions to Omaha's assigned geographic area are the following locations inside Omaha's area which have been and will continue to be serviced by the following official agency:

Fremont Grain Inspection Department, Inc.: Farmers Cooperative, and Krumel Grain and Storage, both in Wahoo, Saunders County, Nebraska.

Interested parties, including Lincoln and Omaha, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning May 1, 1988, and ending April 30, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: October 20, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87–25236 Filed 10–30–87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the State of Alabama

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to the Alabama Department of Agriculture and Industries (Alabama).

DATE: Comments to be postmarked on or before December 17, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090–6454. *Telemail* users may respond to [IRSTAFF/FGIS/USDA] telemail. *Telex* users may respond as follows:

To Lewis Lebakken

TLX: 7607351, ANS: FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Labakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Exeuctive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within a specified geographic area in the September 1, 1987, **Federal Register** (52 FR 32947). Applications were to be postmarked by October 1, 1987. Alabama was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicant. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: October 20, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87–25237 Filed 10–30–87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Agri Seed Agency (AZ)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to the Agricultural Seed Laboratories, Inc. (Agri Seed).

DATE: Comments to be postmarked on or before December 17, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090–6454. *Telemail* users may respond to [IRSTAFF/FGIS/USDA] telemail. *Telex* users may respond as follows:

TO: Lewis Lebakken

TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within a specified geographic area in the July 1, 1987, **Federal Register** (52 FR 24490). Applications were to be postmarked by July 31, 1987. The Service received no applications for Agri Seed's designation postmarked by that date. As a result, the Service again requested applications for official agency designation to provide official services within Agri Seed's geographic area in the September 1, 1987, **Federal Register** (52 FR 32949). Applications were to be postmarked by October 1, 1987. Agri Seed was the only applicant for designation in its

geographic area and applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicant. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: October 23, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87–25238 Filed 10–30–87; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 24–87]

Proposed Foreign-Trade Zone, Brazoria County, TX, Freeport, TX, Port of Entry Area; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Brazos River Harbor Navigation District requesting authority to establish a general-purpose foreign-trade zone at sites at Brazoria County, Texas, within the Freeport Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board. It was formally filed on October 22, 1987. The applicant is authorized to make this proposal under House Bill 2443, State of Texas, 69th Legislature (June 12, 1985).

The proposed foreign-trade zone would consist of six sites (1,957 acres) within the Port of Freeport and at the Brazoria County Airport. Site 1 (280 acres) is located on F.M. Route 1495 at Freeport Harbor, on the east side of the Brazos River Channel. The site has several buildings that would be used for general-purpose zone activity. Site 2 (154 acres) is located on Holly Street, south of the Gulf Intracoastal Waterway. This facility is used for liquid bulk storage. The remaining four sites are being requested as standby space for future zone activity. Site 3 (1,063 acres) is located at the intersection of State Highway 288 and F.M. Route 1495. Site 4 (242 acres) is located on F.M. Route 1492, north of the Gulf Intercoastal Waterway and south of the Brazos River Channel. Site 5 (213 acres) is located on County Road 723, south of Site 4 and the Gulf Intercoastal Waterway. Site 6 (5 acres) is located at the Brazoria County Airport.

The application contains evidence of the need for zone services in the Freeport port of entry area. Several firms have indicated an interest in using zone procedures for the storage and distribution of products such as foodstuffs, jute bags, lumber and chemicals. No requests for manufacturing approval are being sought at this time. Such requests will be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Don Gough, Deputy Assistant Regional commissioner, Inspection and Control, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057–3012; and Colonel John A. Tudela, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, Texas 77553–1229.

As part of its investigation, the examiners committee will hold a public hearing on December 8, 1987, beginning at 9 a.m. in the Port of Freeport Administration Building, Board Meeting Room, 1001 Pine Street, Freeport, Texas 77541.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by November 30. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through January 11, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 100 Pine Street, P.O. Box D, Freeport, Texas 77541

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: October 27, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–25321 Filed 10–30–87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C–351–029]

Certain Castor Oil Products From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On May 19, 1987, the Department published the preliminary results of its administrative review of the countervailing duty order on certain castor oil products from Brazil. The review covers the period January 1, 1985 through December 31, 1985 and 15 programs

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all the comments received, the Department has determined the net subsidy to be 0.39 percent *ad valorem* for the period of review. The Department considers any rate below 0.50 percent *ad valorem* to be *de minimis*.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Jean M. Carroll or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 19, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 18726) the preliminary results of its administrative review of the countervailing duty order on certain castor oil products from Brazil (41 FR 8634, March 16, 1976). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this harmonized system ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. Such merchandise is currently classifiable under TSUSA items 178.2000, 490.2650, and 490.2670. These products are currently classifiable under HS item numbers 1516.20.9000, 1519.11.0000 and 2915.90.1050.

The review covers the period January 1, 1985 through December 31, 1985 and 15 programs: (1) CACEX export financing; (2) an income tax exemption for export earnings; (3) the export credit premium for the IPI; (4) CIC-CREGE 14–11 financing; (5) incentives for trading companies (Resolution 643); (6) accelerated depreciation for Brazilian-made capital goods; (7) BEFIEX; (8) CIEX; (9) FINEX; (10) duty-free treatment and tax exemption on equipment used in export production ("CDI"); (11) FUNPAR; (12) exemption from state-adminstered value added taxes on domestic sales ("ICM"); (13) PROEX; (14) PROSIM; and (15) financing for the storage of merchandise destined for export (Resolution 330).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the Government of Brazil and three exporters, Sociedade Algodoeira do Nordeste Brasileiro, S.A. ("SANBRA"), Braswey, S.A., Industria e Comercio, (Braswey) and Braswey Exportadora, S.A. (Braswey Trading).

Comment 1: The Government of Brazil argues that the Department incorrectly weighted the benefits from CACEX export financing by the proportion of each firm's exports to all markets. The Department should weight the benefits by the proportion of exports of this merchandise to the United States.

Department's Position: We agree and have corrected the calculations. We determine the benefit from CACEX export financing under Resolution 882 to be 0.09 percent *ad valorem* and from CACEX trading company financing to be 0.05 percent *ad valorem.*

Comment 2: The Government of Brazil argues that the Department should not include the exemption from the IOF tax (tax on financial transactions) in its calculation of the interest rate benchmark.

Department's Position: We have considered and rejected this argument in other Brazilian countervailing duty cases. *See, e.g., Certain Castor Oil Products from Brazil* (48 FR 40534, September 8, 1983).

Comment 3: The Government of Brazil, Braswey, and Braswey Trading Company argue that the Department failed to weight-average the companies' benefits from the income tax exemption program by the proportion of their exports of this merchandise to the United States.

Department's Position: We agree and have corrected the calculations. We determine the benefit from this program to be 0.21 percent *ad valorem.*

Comment 4: The Government of Brazil argues that the Department should use total sales, not total exports, as the denominator in calculating the benefit from the income tax exemption program.

Department's Position: We disagree. See the final results of our last administrative review in this case (51 Fr 45497, December 19, 1986).

Comment 5: The Government of Brazil contends that CIC–CREGE 14–11 loans should not be countervailed because the government does not fund such loans and does not regulate or in any way control the provision of such loans. In additon, the terms of these loans are comparable to commercial terms.

Department's Position: We disagree. See the final results of our last administrative review in this case. Because the Government of Brazil has provided no new information on this program, we have not reconsidered it.

Comment 6: The Government of Brazil argues that under CIC–CREGE 14–11, commercial banks recover all of their costs and that, therefore, the loans cannot be countervailable.

Department's Position: We do not consider the cost to commercial banks in determining whether a program is countervailable. We are concerned with the benefit to the recipient of the financing, rather than to the commercial bank. We measure the benefit from preferential loans against our commercial benchmark, which is a national average interest rate. We found that the rate for this program was lower than our benchmark. Therefore, regardless of whether the commercial banks recover their costs, the loans are countervailable.

Comment 7: Assuming that CIC–CREGE loans do confer a subsidy, the Government of Brazil argues that the Department incorrectly weighted the benefit from these loans by the proportion of each firm's exports to all markets. The Department should weight the benefits by the proportion of each firm's exports of this merchandise to the United States.

Department's Position: We agree and have corrected the calculations. We now determine the benefit from this program to be 0.04 percent *ad valorem.*

Comment 8: Assuming that CIC–CREGE loans do confer a subsidy, the Government of Brazil contends that the Department used the wrong benchmark is calculating the benefit. The Department used the average annual interest rate in effect when the loan was received. The Government of Brazil argues that the Department should use the relevant weekly or monthly rate in effect when the loan was received to calculate the benefit.

Department's Position: We disagree. See the final results of our last administrative review in this case. Because the Government of Brazil has provided no new information or new arguments on this issue, we have not reconsidered it.

Comment 9: The Government of Brazil contends that the rate published in *Analise/Business Trends* is not the most appropriate benchmark interest rate available. The Department should use the average commercial bank lending rates published by Morgan Guaranty Trust Company in its *World Financial Markets.*

Department's Position: We disagree. See the final results of the last administrative review in this case. Because the Government of Brazil has provided no new information or new arguments on this issue, we have not reconsidered it.

Comment 10: The Government of Brazil argues that the accelerated depreciation provisions of the Brazilian Industrial Development Council ("CDI") are generally available and, therefore, not countervailable. If the Department continues to consider the program countervailable, the Brazilian government contends that there is still no benefit because the "recapture" (*i.e.,* the amount added back to the current year's net profit from the amount of accelerated depreciation claimed in prior years) eliminates any net tax benefit. In its last verification, the Department collected all the documents

relevant to this review period showing that there was no net benefit from this program. The Government of Brazil argues that the Department miscalculated the benefit from the accelerated depreciation program by not subtracting the amount of recapture from the amount of accelerated depreciation claimed in the review period.

Department's Position: We disagree. We have found that CDI benefits are provided by the government to specific industries. *See, Certain Carbon Steel Products from Brazil* (49 17988, April 26, 1984). Regarding the recapture, we addressed this issue in the final results of the last administrative review in this case. Although we do have the tax forms filed in the review period, those forms do not show the amount of recapture attributable to CDI. Neither at our last verification nor in its questionnaire response did the Government of Brazil provide documents linking the recapture to the CDI program.

Comment 11: The Government of Brazil argues that the Department failed to take into consideration the full amount of the export taxes paid during the review period. Since the export taxes paid were higher than the IPI export credit premiums received, the Department should consider the overpayment an offset against the total subsidy received.

Department's Position: We disagree. See the final results of the last administrative review in this case. Because the Government of Brazil has provided no new information or new arguments on this issue, we have not reconsidered it.

Final Results of Review

After reviewing all of the comments received, we determine the net subsidy to be 0.39 percent *ad valorem* for the period of review. The Department considers any rate below 0.50 percent *ad valorem* to be *de minimis*.

The Department will therefore instruct the Customs Service not to assess countervailing duties on any shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

The Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of certain castor oil products from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: October 27, 1987.

[FR Doc. 87-25319 Filed 10-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Baylor College of Medicine et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m., and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-273. *Applicant:* Baylor College of Medicine, Center for Biotechnology, One Baylor Plaza, Houston, TX 77030. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi, Japan. *Intended Use:* Study of biological material from a variety of animal species including the human; specifically retinal tissue from the eye and some tissues from the central nervous system. Experiments will be conducted to identify the neurotransmitter/neurotransmitters used at a synaptic site and to study the organization of these synapses in an attempt to understand how this organization provides a structural basis for information processing. *Application Received by Commissioner of Customs:* August 6, 1987.

Docket Number: 87-287. *Applicant:* Massachusetts Eye and Ear Infirmary, Research Administration and Finance, 243 Charles Street, Boston, MA 02114. *Instrument:* Electron Microscope, Model CM10/PC. *Manufacturer:* N.V. Philips, The Netherlands. Intended Use: The instrument will be used to conduct varied research projects including studies of: (1) Vision and ocular disease; (2) trabecular meshwork in glaucoma; (3) aminoglycoside-induced outer retinal injury; (4) the mucous layer of the preocular tear film in normal and diseased human conjunctiva; (5) trabecular meshwork, including extracellular matrix components, structure of cytoskeletal elements in trabecular cells, and phagocytosis; (6) laser-induced vascular injury in the choroid, particularly after introduction of exogenous chromophores and (7) retinal injury following exposure of the retina to ultrashort laser pulses. *Application Received by Commissioner of Customs:* September 8, 1987.

Docket Number: 87-289. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Portable Dilution Refrigerator. *Manufacturer:* D.Ph.S.R.M., CEN Saclay, France. *Intended Use:* The instrument will be used in the research project Experimental Study of Quantum Chaos and Magnetic Solidification in a 2-Dimensional Electron System which involves studies of microwave liberation of electrons bound to the liquid helium surface and studies of the magnetically induced Wigner transition in a 2-D electron system. The instrument will also be used for training graduate students who use the instrument for research that satisfies the requirements for the PhD. degree. *Application Received by Commissioner of Customs:* September 8, 1987.

Docket Number: 87-291. *Applicant:* Emory University, Department of Oral Biology, 1462 Clifton Road, Atlanta, GA 30322. *Instrument:* Electron Microscope, Model EM 10CA/CR/C. *Manufacturer:* Carl Zeiss, West Germany, *Intended Use:* The instrument will be used for the localization of antigens and enzymes by immunocytochemistry, analysis of structural details of the crystalline material, microfilaments and microtubles, and the production of high quality, distortion-free photomicrographs for publication. The research projects include the following:

1. Diabetic Autonomic Neuropathy Salivary Gland Function in the Rat
2. Insulin and Protein Synthesis in the Rat Submandibular Gland
3. Functional and Metabolic Characterization of Isolated Osteoclasts
4. Bachtericidal Activity of Human Lactoferrin: Characterization of Active Sites and Bacterial Cell Surface Targets
5. Characterization of the Instracellular Interactions Between *Legionella pneumophila* and Freshwater Amoebae
6. Analysis of Purified *Streptococcus mutans* Ribosomes and Preparation of Synthetic Analogs

7. Neutrophil and its Environment: Structural and Functional Relationship of the Inflammatory Processes.

Application Received by Commissioner of Customs: September 10, 1987.

Docket Number: 87–292. *Applicant:* University of California, San Francisco, 3rd and Parnassus, San Francisco, CA 94143. *Instrument:* Electron Microscope, Model JEM–1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructure of several tissue and cell types and to localize cell-surface antigens in a variety of cell types. All specimens to be studied will be of biological origin and include: Permanent control and tumor tissue culture cell lines of rodent, avian and human origin; mouse embryonic tissues; mouse and human placental tissue and human amnion; neutrophils; oral pathogenic bacteria; oral lesions associated with infection with the AIDS virus. In addition, the instrument will be used for the training of dental and graduate students, residents and post doctoral fellows. *Application Received by Commissioner of Customs:* September 11, 1987.

Docket Number: 87–294. *Applicant:* University of California, Los Angeles, 405 Hilgard Ave., Los Angeles, CA 90024. *Instrument:* Preparative Quench and Stopped-flow Sample Handling Unit, Model PQ/SF–53. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the enzyme responsible for acid secretion into the stomach, IUB name: magnesium requiring, proton translocating, and potassium activated adenosine 5 -triphosphatase. Experiments will be conducted to learn:

(a) How protons affect the phosphorylation rate.

(b) Whether the flourescence changes are fast enough to report steps in the catalysis-transport mechanism.

(c) Whether pNPP hydrolysis is catalyzed via a phosphoenzyme intermediate.

Application Received by Commissioner of Customs: September 11, 1987.

Docket Number: 87–295. *Applicant:* University of Delaware, Department of Plant Science, Soil Chemistry Labortory, Newark, DE 19717–1303. *Instrument:* Pressure-Jump Spectrometer consisting of Relaxation Digitizer, Model DIA–RP and DIA–RRD. *Manufacturer:* DiaLog, West Germany. *Intended Use:* The instrument will be used to measure the kinetics of cation and anion reactions on soils and soil constituents at micro- and millisecond time scales. The studies will involve the rapid rate of absorption/desorption of ions such as nitrate, phosphate, borate, potassium, and magnesium. These rapid reations are important in soils, and their measurement will assist in the modeling of field reactions so that groundwater pollution can be minimized. *Application Received by Commissioner of Customs:* September 11, 1987.

Docket Number: 87–296. *Applicant:* New York Medical College, Department of Pathology, Basic Science Building, Valhalla, NY 10595. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* Studies of heart, lungs, isolated cell, cytolytic attack complex of C5–9 and C5–C5 convertase interactions to gain new and useful information in the immunobiological reactions in the lung in response to oxygen toxicity, C5a induced inflammation and in hypertensive heart disease. *Application Received by the Commissioner of Customes:* September 11, 1987.

Docket Number: 87–297. *Applicant:* University of Vermont, Department of Biochemistry, Given Building, Burlington, VT 05401. *Instrument:* Five Syringe Quenched Flow Module. *Manufacturer:* Biologic, France. *Intended Use:* Studies of the rapid reaction kinetics of prothrombin activation catalyzed by the enzyme prothrombinase. These studies will be done using purified proteins isolated from Bovine or Human plasma and will provide information relating to the fundamental reactions involved in the formation of the blood clot. *Application Received by the Commissioner of Customs:* September 14, 1987.

Docket Number: 87–298. *Applicant:* The Catholic University of America, Vitreous State Laboratory, 620 Michigan Ave., NE., B–2 Keane Building, Washington, DC 20064. *Instrument:* Inductively Coupled Plasma Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* The instrument will be used to perform highly sensitive elemental and isotopic analyses required in the following research programs:

(1) Development of ultrapure zirconium oxychloride optical fibers

(2) Development of isotopic tracers for acid rain transport modeling

(3) Isotopic analyses of vitrified nuclear wastes and their leachates as part of the Department of Energy's High Level Nuclear Waste Program

(4) Development of extractionless analytical screening methods for toxic/hazardous waste sites.

Application Received by Commissioner of Customs: September 14, 1987.

Docket Number: 87–299. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. *Instrument:* Thermal Image Single Crystal Growth Furnace. *Manufacturer:* NEC Corporation, Japan. *Intended Use:* The instrument will be used for studies of the following:

1. Single crystals of geoscience interest such as olivine, forsterite, fayalite, etc.

2. Single crystals that have the properties to be used as laser host material such as GGG, YAG, etc.

3. Single crystals which have non-linear optical properties such as LiNbo3 etc.

Experiments will be conducted to: (a) Have a better understanding of the earth's upper mantle, (b) search for new laser host single crystal material, (c) study the effect of impurity on the properties of laser material. *Application Received by Commissioner of Customs:* September 14, 1987.

Docket Number: 87–300. *Applicant:* University of Oklahoma, 660 Parrington Oval, Norman, OK 73019. *Instrument:* Electron Microscope with Accessories, Model JEM–2000FX/SIP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to examine biological, ceramic, chemical, geological and metallurgical specimens to determine their fine structural characteristics and elemental composition. The objectives of the research include basic scientific investigation of the organization of physical and biological materials. In addition, the instrument will be sued in various botany courses to provide graduate and undergraduate students with instruction in the classroom and laboratory using lectures, video-taped instruction, experiments and supevised hands-on equipment usage. *Application Received by Commissioner of Customs:* September 15, 1987.

Docket Number: 87–301. *Applicant:* Father Flanagan's Boys Town, Boys Town National Institute, 555 North 30th Street, Omaha, NE 68131. *Instrument:* Electron Microscope, Model CM 10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for the study of the fine structure of sensory organs to determine the effects of experimental treatments, such as surgical intervention and treatment with toxic substances and to investigate the normal development of brain neurons and abnormal development following experimental

treatments. *Application Received by Commissioner of Customs:* September 16, 1987.

Docket Number: 87–302. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, L–650, Livermore, CA 94550. *Instrument:* Inductively Coupled Plasma Source Mass Spectrometer with Accessories, Model PlasmaQuad. *Manufacturer:* V.G. Isotopes, Ltd., United Kingdom. *Intended Use:* The instrument is intended to be used for isotopic and elemental determinations of special nuclear materials, stainless stell alloys, aluminum alloys and environmental samples. The elements to be analyzed include the transition and rare earth elements. Investigations will be conducted to develop rapid, high sensitivity methods for isotopic and elemental analysis. *Application Received by Commissioner of Customs:* September 16, 1987.

Docket Number: 87–303. *Applicant:* The Research Foundation of the State University of New York. P.O. Box 9, Albany, NY 12201–0009. *Instrument:* X–Y–Z and Rotation Stage for NRD Press. *Manufacturer:* NRD Corporation, Japan. *Intended Use:* Studies of oxide and silicate minerals and their chemical analogues to determine (a) precise equilibrium boundaries between coexisting phases; (b) pressure-volume-temperature equations of state and (c) kinetics and mechanisms of phase transformations. The objectives of the experiments conducted are to understand more fully the behavior and properties of materials under ultra high-pressure conditions. educational uses will include teaching students the concepts and techniques of high pressure mineral physics and crystallography. *Application Received by Commissioner of Customs:* September 25, 1987.

Docket Number: 87–304. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* V.G. Isotopes, United Kingdom. *Intended Use:* The instrument will be used for (a) isotopic composition measurements of elements not accessible by conventional isotope ratio mass spectrometry, (b) elemental concentration determinations, and (c) determination of impurities in samples prepared for other methods of analysis. *Application Received by Commissioner of Customs:* October 6, 1987.

Docket Number: 87–306. *Applicant:* Harvard University School of Public Health, 665 Huntington Avenue, Boston, MA 02115. *Instrument:* Electron Microscope with Integrated Imaging Spectrometer, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for the determination of the spatial distribution and concentration of biologically relevant elements over every point in an image in relationship to the underlying matrix. Research programs will include but are not limited to the following:

1. Exploration of the relationship between the environment and the mammalian respiratory tract
2. Use of magnetic particles to assess macrophage behavior and lung injury
3. Deposition and clearance of particles in bird lungs
4. Cell structures involved in phagocytosis and organelle movement
5. Pulmonary macrophage immunology and cell biology
6. Lung insterstitium in health and disease.

Application Received by Commissioner of Customs: October 6. 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–25320 Filed 10–30–87; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Red Drum Stock Assessment Panel, November 9, 1987, from 9 a.m. to 5 p.m., and reconvene November 10 from 9 a.m. to 4 p.m., to review the revised red drum stock assessment and develop a report to the Council recommending an allowable biological catch range, with associated risk analysis, etc. The public meeting will convene at the National Marine Fisheries Service, Southeast Fisheries Center, 75 Virginia Beach Drive, Miami, FL.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: October 28, 1987.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–25334 Filed 10–30–87; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Texas Habitat Protection Advisory Panel to develop recommendations to the Council's Habitat Protection Committee concerning positions on the Galveston Bay area navigation project and the Wallisville project, and to discuss updates on environmental issues of the Gulf Intracoastal Waterway. The public meeting will convene November 12, 1987, from 3 p.m. to 5 p.m., at the University of Houston, Conrad N. Hilton College Building, 4800 Calhoun, Houston, TX, and reconvene November 13 from 8 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: October 23, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–25291 Filed 10–30–87; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish Plan Teams, and the Halibut Management Team will convene separate public meetings at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, NE., Building 4, Seattle, WA, as follows:

Groundfish Plan Teams—Will convene November 16–19, 1987, in Rooms 2079 and 2143 to prepare final resource assessment documents for Gulf of Alaska and Bering Sea/Aleutian Islands groundfish for 1988, and to

review proposals to amend the groundfishery management plans.

Halibut Management Team—Will convene November 19–20 in Room 2079 to prepare environmental assessment and regulatory impact review documents for allocative regulations proposed for the International Pacific Halibut Commission Registration Areas 4C and 4E to be considered by the Council in December.

For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; Telephone: (907) 274–4563.

Date: October 26, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–25292 Filed 10–30–87; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Concil; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled separate public meetings of its advisory entities as follows:

Interim Action Committee for the Bering Sea/Aleutian Islands Groundfish Fisheries—is tentatively scheduled to convene October 30, 1987, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way NE. (no room yet assigned), to consider a request from the American High Seas Fisheries Association for immediate Council action to raise the upper limit of the optimum yield range inthe Bering Sea/Aleutian Islands Groundfish Fishery Management Plan (FMP).

Scientific and Statistical Committee—will convene November 17–18, 1987, with the Council's Plan Team, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 2725 Montlake Boulevard, East, Seattle, WA, to review the revised draft Bering Sea/Aleutian Islands King and Tanner Crab FMP.

A new Council workgroup, charged with making recommendations to the Council on long-term management strategies for groundfish fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands, will convene an organizational meeting November 19–20, 1987, at the Montlake auditorium (address above). The public meeting will convene at 9 a.m. on November 19.

For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Date: October 28, 1987.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–25335 Filed 10–30–87; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene separate public meetings, November 16–19, 1987, at the Red Lion Inn-Columbia River, 1401 North Hayden Island Drive, Portland, OR, as follows:

Council—On November 18 the Council will convene at 8 a.m., with a closed session (not open to the public) to discuss litigation, personnel, and other appropriate matters. At 8:30 a.m. the Council will commence its open session to consider administrative matters and groundfish management issues. After receiving comments from its advisory entities and the public, the Council will adopt 1988 specifications of optimum yield, harvest guidelines, and total allowable level of foreign fishing; domestic management measures for 1988; joint venture and foreign fishery management measures; limited entry objectives; amemdments to the Groundfish Fishery Management Plan (FMP) concerning habitat and vessel safety; and also will address other groundfish matters. There will be a public comment period at approximately 4 p.m. On November 19 the Council will reconvene at 8 a.m. to complete any unfinished groundfish business and address halibut allocation, salmon and anchovy management. After receiving comments from its advisory entities and the public, the Council will consider refinements to its preseason salmon management process and schedule for 1988; adopt final amendments to the Salmon FMP concerning habitat and vessel safety; discuss options for revising the framework allocation plan for ocean salmon fisheries north of Cape Falcon, OR, and address other salmon matters.

The Council also will consider proposed regulations for allocating Pacific halibut among U.S. fishermen and amending the Anchovy FMP to include other coastal pelagic species.

Scientific and Statistical Committee—On November 16 will convene at 1 p.m. to consider matters on the Council's agenda, and will reconvene November 17 at 8 a.m.

Groundfish FMP Rewrite Oversight Group—On November 16 will convene at 1 p.m. to give initial guidance to the drafting team designated to rewrite the Groundfish FMP.

Groundfish Select Group—On November 17 will convene at 8 a.m. to develop recommendations to the Council on groundfish management measures for 1988.

Groundfish Advisory Subpanel—On November 17 will convene at 1 p.m. to address groundfish management matters on the Council's agenda.

Foreign Fishing Committee—On November 17 will convene at 3 p.m. to consider joint venture and foreign fishery management issues on the Council's agenda.

Enforcement Consultants—On November 17 will convene at 7 p.m. to discuss enforcement issues as they relate to Council management plans.

Salmon Advisory Subpanel/Salmon Select Group—On November 18 will convene at 1 p.m. to recommend refinements to the Council's preseason salmon management process for 1988.

Detailed agendas for all of the above meetings will be available to the public after November 6. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: October 28, 1987.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–25336 Filed 10–30–87; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council, its Committees, and its Billfish Advisory Panel will convene public meetings as follows:

Council and its Committees—On November 30, 1987 through December 3, 1987, at the Jekyll Island Club on Jekyll Island, GA, will convene with a closed session (not open to the public) to discuss personnel matters. Following the closed session, discussions will concern large pelagics, snapper-grouper, king and Spanish mackerel, law enforcement, and other fishery management business. A detailed agenda will be available to

the public on or around November 19, 1987.

Billfish Advisory Panel—Rescheduled from November 2, 1987, to November 9, 1987, from 1 p.m. to 5 p.m. at the Council's Headquarters (address below), will review billfish public hearing comments and develop recommendations for the Council on the Billfish Plan. A detailed agenda will be available to the public on or around October 30, 1987.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407 telephone: (803) 571–4366.

Date: October 28, 1987.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–25337 Filed 10–30–87, 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will convene separate public meetings of its Plan Monitoring Teams at 1164 Bishop Street, Room 602, Honolulu, HI, as follows:

Pelagics Plan Monitoring Team—On November 3, 1987, at 9 a.m., will discuss the status of the first annual report on the Pelagic Species Fishery Management Plan (FMP), draft guidelines for experimental drift gillnet permits, review the draft paper on "The Blue Marlin Fishery of Kona, Hawaii," preview a video on promotion of tag and release of billfish, as well as discuss other Team business.

Bottomfish Plan Monitoring Team—On November 6, 1987, at 9 a.m., will review the first annual report on the Bottomfish FMP, review the National Marine Fisheries Service Southwest Regional Counsel's recommended changes to the July 1987 limited entry amendment as prepared by the consultant, review the November 1987 limited entry amendment as prepared by the Council's staff, as well as discuss other Team business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368

Date: October 28, 1987.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–25338 Filed 10–30–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

October 28, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 3, 1987. For further information contact Naomi Freeman, 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, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementaion of Textile Agreements directs the Commissioner of Customs to increase the previously established 1987 restraint limit for cotton and man-made fiber textile products in Category 341/641, produced or manufactured in Jamaica.

Background

A CITA directive dated March 27, 1987 was published in the **Federal Register** (52 FR 10389) which established import restraint limits for certain cotton and man-made fiber textile products, including, Categoray 338/339/638/639, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987. A further CITA directive dated April 21, 1987 (52 FR 13858) established an import restraint limit for Category 341/641, among others, for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

In accordance with the terms of the Bilateral Cotton, Wool, Man-Made fiber Silk Blend and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, and at the request of the Government of Jamaica, the limit for Category 341/641 is being increased by application of swing and carryforward. The limit for Category 338/339/638/639 is being reduced to account for the swing applied to Category 341/641.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 17, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51, FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Adoptions by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustment to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 28, 1987.

Commissioner of Customs;

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on March 27, 1987 and April 21, 1987 concerning certain cotton, Wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the periods which began, in the case of Category 338/339/638/639, on September 1, 1986; and, in the case of Category 341/641, on January 1, 1987 and extend through December 31, 1987.

Effective on November 3, 1987, the directives of March 27, 1987 and April 21, 1987 are hereby amended to include adjustments to the prviously established restraint limits for cotton and man-made fiber textile products in the following categories,

as provided under the terms of the bilateral agreement of August 27, 1986, as amended [1]:

Category	Adjusted 12-mo. limit [1]
338/339/638/639.	5542,435 doz.
341/641.....	431,200 doz.

[1] The limits have not been adjusted to account for any imports exported after August 31, 1986 for Category 338/339/638/639 and December 31, 1986 for Category 341/641.

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).elderly 2

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-25265 Filed 10-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Northern Mariana Islands (CNMI) From Imported Parts

October 27, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 2, 1987. 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, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On November 3, 1986, a notice was published in the **Federal Register** (50 FR 39902) announcing that, effective on November 1, 1986, cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI), and certified to have been assembled in the CNMI, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 100,000 dozen. This limited exception was to be effective for sweaters exported from the CNMI during the period which began on November 1, 1986 and extends through October 31, 1987. Subsequent notices published on September 10, 1987 and October 2, 1987 (52 FR 34271 and 52 FR 36994) announced amendments to this limit.

The purpose of this notice is to advise the public that this exception is being continued for goods exported on and after November 1, 1987 and extending through October 31, 1988, in accordance with the terms of the extension of the certification arrangement, dated October 17, 1986, between the Governments of the United States and the Commonwealth of the Northern Mariana Islands, which requires that at least 40 percent of the sweater assembly employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, in accordance with Title I, Article IV of the Compact of Free Association (48 U.S.C. 1681 note).

As a result of an investigation verifying that at least 40 percent of the workers involved in the assembly of the sweaters were citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, the limit for the twelve-month period beginning on November 1, 1987 and extending through October 31, 1988 is 100,000 dozen, with a wool sublimit not to exceed 15,000 dozen. If subsequent investigations determine that less than 40 percent of the employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, the limit may be reduced to 77,910 dozen, with a wool sublimit of 11,687 dozen. However, if subsequent investigations determine that at least 50 percent of the employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States, the limit may be increased to 120,000 with a wool sublimit of 18,000 dozen.

A certification will continue to be required and will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp was published in the **Federal Register** on September 9, 1985 (50 FR 36645).

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess of 100,000 dozen (15,000 dozen for the wool sublimit), will require the appropriate visa or export license from the country of origin and willbe subject to any other applicable restriction.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 27, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. 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, effective on November 2, 1987, you are directed to permit entry or withdrawal from warehouse for consumption in the United States in an amount not to exceed 100,000 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646, with a wool sublimit for Categories 445 and 446 not to exceed 15,000 dozen, the product of any foreign country or foreign territory, as determined under Customs Regulation Part 12, Section 12.130 and which have been certified as assembled in the Commonwealth of the Northern Marianas Islands (CNMI) and exported to the United States during the twelve-month period beginning on November 1, 1987 and extending through October 31, 1988. You are directed not to require any

[1] The agreement provides, in part, that (1) specific limits may be exceeded by designated percentages for swing, carryforward and carryover; (2) no carryover shall be available in the first or final agreement periods.

otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp has been provided.

You are directed to require the appropriate visa or export license from the country of origin and charge any shipments of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 to the country of origin if (a) the 100,000 dozen limit or the 15,000 dozen wool sublimit have been filled, or (b) the products are not accompanied by certification, or (c) the products are not assembled in the Commonwealth of the Northern Mariana Islands and are not of the Commonwealth of the Northern Marianas origin.

In carrying out this directive, entries of the foregoing categories which have been exported to the United States on and after November 1, 1986 and extending through October 31, 1987, shall, to the extent of any unfilled balance be charged against the level of restraint established for such goods during the twelve-month period beginning on November 1, 1986 and extending through October 31, 1987. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in 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,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-25266 Filed 10-30-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.117J]

Invitation of Applications for Fellowship Awards Under the Office of Educational Research and Improvement Fellows Programs for Fiscal Year 1988

Purpose: To provide Federal financial assistance enabling individuals to make contributions to the improvement of education by engaging in educational research.

Deadline for Transmittal of Applications: December 2, 1987.

Available Funds: The Department has requested $300,000 for this program for fiscal year 1988. However, the actual level of funding is contingent upon final congressional action.

Estimated Range of Awards: $25,000–$60,000.

Estimated Average Size of Awards: $40,000.

Estimated Number of Awards: 6–8.

Project Period: Projects will be no less than four nor more than 12 months of full-time activity or the equivalent in less than full-time participation.

Applicable Regulations: Regulations for the Office of Educational Research and Improvement Fellows Program, 34 CFR Part 762. Final regulations for this program were published in the **Federal Register** on August 10, 1987 (52 FR 29608).

Transmittal of Applications: Applications for awards must be mailed, hand- or courier-delivered on or before the deadline date.

Applications Delivered by Mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.117J), 400 Maryland Avenue, SW., Washington, DC 20202.

An application must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand or Courier: Applications that are hand- or courier-delivered must be taken to the U.S. Department of Education, Application Control Center, Room, 3633, Regional Office Building 3, Seventh and D Streets, SW., Washington, DC.

The Department will accept hand- and courier-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand-delivered will not be accepted by the Department after 4:30 p.m. on the closing date.

Application Forms: The Department has no application forms or prescribed format for the Fellows Program. Applicants are encouraged to submit their curriculum vitae and sufficient information to allow the Secretary to determine the merits of the proposed activities.

For Information Contact: Stephen Clements, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 600, Washington, DC 20208. Telephone Number (202) 357-6050.

Program Authority: 20 U.S.C. 1221e.

Dated: October 27, 1987.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 87-25322 Filed 10-30-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES88-4-000, et al.]

Texas-New Mexico Power Co., et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Texas-New Mexico Power Company

[Docket No. ER88-4-000]

October 20, 1987.

Take notice that on October 13, 1987, Texas-New Mexico Power Company filed an application pursuant to section 204 of the Federal Power Act for authority to guarantee up to $345,000,000 of short-term promissory notes and commercial paper in connection with the financing of electric generating plant facility.

Comment Date: November 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa-Illinois Gas and Electric Company

[Docket No. ER88-38-000]

October 20, 1987.

Take notice that on October 15, 1987, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, tendered for filing pursuant to § 35.27(d) of the Regulations under the Federal Power Act a proposed rate schedule change [reduction] due to reductions in the Federal corporate income tax rate applicable to Rate Schedule Wholesale Electric Service-Municipal Partial Requirements. The only customer currently served under this Rate Schedule is the city of Eldridge, Iowa.

The proposed rate change would reduce annual revenues under the rate of approximately 6.6% based on sales for the 12-month ended June 1987.

Iowa-Illinois proposes that, upon acceptance by the Commission, the rate reduction be effective retroactive to July 1, 1987 in accordance with § 35.27(f) of the Regulations.

Comment Date: November 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ES88-1-000

3. Gulf States Utilities Company

October 20, 1987

Take notice that on Octoer 5, 1987, Gulf States Utilities Company (Applicant) filed an application pursuant to section 204 of the Federal Power Act for authority to issue up to $400,000,00 of secured and/or unsecured short-term promissiory notes and commercial paper with a final maturity date of no later than December 31, 1990.

Comment Date: November 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. FR88-37-000]

4. Green Mountain Power Corporation

Take notice that on October 15, 1987, Green Mountain Power Corporation (Company) tendered for filing Supplements to its postage-stamp transmission rate schedules, FERC Schedule Nos. 60, 62, 64, 66, 68, 73 and 85. These Supplements provide for a decrease in the Company's transmission (wheeling) rate form 56.5 cents per kilowatt-month to 52.4 cents per kilowatt-month to be made effective as of July 1, 1987.

The Company states that the rate reduction, which reflects a change in the federal corporate tax rate from 46% to 34%, was calculated using the formula mandated by FERC in its Order in Docket No. RM87-4-000 and embodied in 18 CFR 35.27(c).

The Company states that copies of the filing have been served upon the Village of Hardwick, Electric Department, the Village of Morrisville Water and Light Department, the Village of Northfield Electric Department, the Village of Stowe Water and Light Department, Washington Electric Cooperative, Inc., the Village of Readsboro Light Department, the Village of Jacksonville Light Department, Burlington Electric Department, the Vermont Public Service Board and the Vermont Public Service Department.

Comment Date: November 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER88-50-000]

5. Virginia Electric and Power Company

October 26, 1987

Take notice that on October 20, 1987, Virginia Electric and Power Company (Company) tendered for filing a Settlement Agreement between the Company and Old Dominion Electric Cooperative (ODEC) pursuant to which, among other matters, the Company would

(1) Waive the requirements of the Interconnection and Operating Agreement between the Company and ODEC that relate to notice for termination of service; and

(2) Provide the services, including regulation services and emergency power, to accommodate the power sale from the APS Company to ODEC filed in Docket No. ER87-586-000.

Waiver of the Commission's notice requirements is requested so as to permit service to commence concurrent with the sale by the APS Companies to ODEC.

Copies of the filing have been served on ODEC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: November 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER87-65-005]

6. West Texas Utilities Company

October 26, 1987

Take notice that on October 19, 1987, West Texas Utilities Company (WTU) tendered for filing a refund report pursuant to the Commission's letter order, dated September 15, 1987, in this proceeding.

WYU's refund report included tabulations for each wholesale customer showing the monthly billing determinants, revenue receipt dates and revenues under prior, present and settlement rates; the monthly revenue refunds, the monthly interest and a summary of all refunds; and workpapers underlying the interest calculations.

Comment Date: November 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power

[Docket Nos. ER88-30-000, ER88-31-000, ER88-32-000, ER88-33-000, and ER88-34-000]

October 26, 1987.

Take notice that on October 21, 1987, Indiana Michigan Power (I&M) tendered for filing an amendment to its application to change rates filings dated October 15, 1987. I&M states that it has discovered an error in the rate design portion of these filings, and has submitted corrected rate schedules and related statements and exhibits. The error has no impact on the overall revenue requirements requested, but does affect the proposed demand, customer, and energy charges to produce this revenue.

Comment Date: November 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Electric Energy, Inc.

[Docket No. ER88-51-000]

October 26, 1987.

Take notice that on October 21, 1987, Electric Energy, Inc. (EEInc.) tendered for filing Modification No. 12 to the Power Contract between EEInc. and the United States Department of Energy (DOE) and a Power Supply Agreement between EEInc. and its four Sponsoring Companies, Central Illinois Public Service Company (CIPS), Illinois Power Company (IP), Kentucky Utilities Company (KU) and Union Electric Company (UE). The two agreements supersede, in their entirety, EEInc.'s current contracts with DOE and the four Sponsoring Companies. EEInc. requests an effective date of December 1, 1987 for each of the agreements and, accordingly, seeks waiver of the notice requirements of the Federal Power Act.

Copies of the filing have been served on DOE, the four Sponsoring Companies and the Illinois Commerce Commission. Copies are also available for inspection at EEInc.'s offices in Joppa, Illinois.

Comment date: November 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Georgia Power Company

[Docket No. ER87-397-000]

October 26, 1987.

Take notice that Georgia Power Company (Georgia Power) on April 21, 1987 and October 2, 1987, tendered for filing proposed changes in its FERC Rate Schedule No. 704, the Interchange Agreement between Georgia Power Company and the Tennessee Valley Authority. The proposed changes provides for an additional delivery point between the parties and substitution of a 14% return on equity in calculating Georgia Power's carrying costs instead of a varying rate based on Georgia Power's most recent wholesale rate case. Georgia Power has requested an effective date of January 1, 1987 for the changes.

Copies of the filings were served upon the Tennessee Valley Authority.

Comment Date: November 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Gulf States Utilities Company

[Docket No. ES88-5-000]

October 27, 1987.

Take notice that on October 19, 1987, Gulf States Utilities Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue up to $250,000,000 principal amount of secured or unsecured debentures or notes in one or more series and for exemption from competitive bidding and certain negotiating requirements.

Comment Date: November 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

Union Electric Company

[Docket No. ES88-6-000]

October 27, 1987.

Take notice that on October 21, 1987, Union Electric Company (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking an order authorizing the issuance of short-term, unsecured promissory notes in the aggregate amount of $300,000,000 at any one time, of which up to $150,000,000 at any one time may be in the form of commercial paper, with final maturities not later than December 31, 1989.

Comment Date: November 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisssion and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25310 Filed 10-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-4-000, et al.]

Indeck Energy Services, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment Date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Indeck Energy Services, Inc.

[Docket No. QF88-4-000]

October 20, 1987.

On October 5, 1987, Indeck Energy Services, Inc. (Applicant) of 1111 S. Willis Avenue, Wheeling, Illinois 60090, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located adjacent to the Morton Salt Company, at 45 Riband Avenue East, in Silver Springs, New York. The facility will consist of a combustion turbine generator, a waste heat recovery steam generator, and an extraction/condensing steam turbine generator. Extraction steam from the steam turbine will be used in the preparation and production of salt and for space heating. The maximum net electric power production capacity of the facility will be 49.9 MW. The primary energy source will be natural gas. The facility is expected to commence operation in July 1990.

2. Wadham Energy Limited Partnership, A California Limited Partnership

[Docket No. QF85-148-001]

October 20, 1987.

On September 21, 1987, Wadham Energy Limited Partnership, A California Limited Partnership (Applicant), c/o The Oxford Energy Company, 675 Third Avenue, New York, New York 10017 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Colusa County, California. The facility will consist of a biomass-fired steam generator and a steam turbine generator. The net electric power production capacity will be 26.5 megawatts. The primary energy source will be biomass in the form of rice hulls and rice straw. Approximately one percent (1%) of the total energy input will be natural gas which will be used for start-up fuel and pilot light operation.

3. Cambria Cogen Co.

[Docket No. QF87-93-001]

October 20, 1987.

On September 30, 1987, Cambria Cogen Co. (Applicant), of P.O. Box 538, Allentown, Pennsylvania 18105 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Under the instant application, recertification is sought to acknowledge subsequent additions to the facility and a change in ownership from Cambria Cogen, Inc. to the Applicant as above. The changes to the facility will consist of the inclusion of interconnection facilities and a transmission line for connection of the facility to the Pennsylvania Electric Company (Penelec). This proposed transmission line will be constructed by Cambria and will be used exclusively to transmit power from the qualifying facility to Penelec. All other details of the facility as described in the original application remain unchanged.

4. Lackawanna Cogeneration Company

[Docket No. QF84-102-001]

October 21, 1987.

On October 9, 1987, Lackawanna Cogeneration Company (Applicant), 100 Clinton Square, Suite 400, Syracuse, New York 13202, submitted for filing an application for certification of a facility as a qualifying cogeneration facility puruant to § 292.207 of the Commission's regulations and request for finding that the facility constitutes "new capacity" pursuant to § 292.304(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Lackawanna, New York. The facility will be a topping cycle cogeneration facility consisting of one combustion turbine, one extraction steam turbine, one waste heat recovery boiler, two steam boilers, and appurtenant facilities. The facility will have a total power production capacity of 62.25 megawatts. The steam produced from the facility will be used in the coke-making process. The primary energy source will be coke oven gas.

5. General Energy Development, Inc.

[Docket No. QF84-504-001]

October 23, 1987.

On September 29, 1987, General Energy Development, Inc. (Applicant), of 155 North Main Street, New City, New York 10956 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Town of Islip, Hauppauge, New York. The facility will consist of internal combustion generator sets. The electric power production capacity will be 4,375 kilowatts. The primary energy source will be biomass in the form of methane and other gases from a sanitary landfill.

By order issued December 18, 1984, the Director of Office of the Electric Power Regulation granted certification of the facility as a small power production facility (29 FERC ¶ 62,317).

The recertification is requested due to change in ownership from Wehran Energy Corporation to General Energy Development, Inc. and electric power production capacity decrease from 4,400 kilowatts to 4,375 kilowatts. All other facility's characteristics remain the same.

6. General Energy Development, Inc.

[Docket No. QF87-63-001]

October 23, 1987.

On September 29, 1987, General Energy Development, Inc. (Applicant), of 155 North Main Street, New City, New York 10956 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Goshen, New York. The facility will consist of internal combustion generator sets. The electric power production capacity will be 5 megawatts. The primary source of energy will be biomass in the form of methane and other gases from a sanitary landfill.

By order issued April 17, 1987, the Director of Office of the Electric Power Regulation granted certification of the facility as a small power production facility (39 FERC ¶ 62,060).

The recertification is requested due to change in ownership from Wehran Energy Corp. to General Energy Development Inc. and electric power production capacity decrease from 9.5 megawatts to 5 megawatts. All other facility's characteristics remain the same.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25309 Filed 10-30-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3284-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 13, 1987 Through October 16, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-BIA-K08015-CA, Rating EC2, Colmac 45 MW Biomass-Fueled Power Plant, Construction and Operation, Lease Approval and Right-of-Way, Los Alamos, Rio Arriba and Santa Fe Counties, NM. SUMMARY: The draft EIS did not adequately discuss the quality, treatment and disposal of wastewater generated by the powerplant. EPA provided information on the required PSD permit and hazardous waste disposal requirements, for ash product that could be classified as hazardous waste under RCRA.

ERP No. D-COE-C36063-NY, Rating EC2, Cattargus Creek and Watershed Flood Damage Reduction Plan, Feasibility Phase, Implementation. SUMMARY: EPA's review of the draft EIS highlights concern over potential adverse impacts to aquatic habitat and ground water as well as impacts from secondary development. Accordingly, EPA requested additional information in the final EIS regarding these concerns.

ERP No. DA-COE-G30008-LA, Rating EC2, New Orleans to Venice Hurricane Protection Plan, Barrier Features Construction, Plaquemines Parish, LA. SUMMARY: EPA expresses environmental concerns with the proposed action without reasonable mitigation for the fishery and upland losses as discussed in the EIS. EPA understands that a mitigation plan will be incorporated in the final EIS.

Final EISs

ERP No. F-FHW-K40153-CA, I-5/ Santa Ana Freeway Widening and Interchange Reconstruction, I-405 to CA-55, Funding, 404 Permit, Cities of Irvine and Tustin, Orange County, CA. SUMMARY: EPA expressed continuing concerns with air quality impacts because the FEIS did not adequately discuss: (1) The project's effect on regional air pollutant levels; (2) the effect on development in the area caused by the project and resulting increases in traffic generation; and (3) the Cumultative impacts to regional air quality from this highway project and ajoining segments.

ERP No. F-FHW-K40154-CA, CA-85 Transportation Corridor Construction, CA-101 in South San Jose to I-280/ Stevens Creek Boulevard in Cupertino, Funding, Santa Clara County, CA. SUMMARY: The final EIS Addressed the concerns EPA had raised on the draft EIS concerning impacts to air quality, wetlands, and riparian habitat areas.

Regulations

ERP No. R-FAA-A52063-00, 14 CFR Parts 36 and 91; Noise Standards and Air Traffic Operating and Flight Rules; Proposed Limits on the Growth of Noise form Certain Airplanes and Airplane Types. SUMMARY: EPA has no objection to the rule as proposed. (Note—The above summary should have appeared in the October 2, 1987 FR Notice.)

ERP No. R-FAA-A52164-00, 14 CFR PART 91, Special Federal Aviation Regulation No. 47; Special Flight Authorization for Noise Restricted

Aircraft. SUMMARY: EPA agrees with FAA finding that proposed rule does not significantly affect the quality of the environment and accordingly has no objection. (Note—The above summary should have appeared in the October 2, 1987 FR Notice.)

Dated: October 28, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-25323 Filed 10-30-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140088; FRL-3285-5]

Contractor and Subcontractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized several contractors and subcontractors for access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than November 16, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA. Section 12 requires a person to report his or her intent to export certain chemical substances to foreign countries. .

In accordance with 40 CFR 2.306(j), EPA has determined that the following contractors and subcontractors will require access to CBI submitted to EPA under TSCA to successfully perform work under the contracts described in the following sections of this notice.

Access to CBI by the contractors shown below was announced in earlier Federal Register notices. EPA is issuing this notice to inform submitters of changes in the TSCA CBI access status under these contracts.

Contract No.: 68-02-4235
Contract Name: ICF incorporated
Address: 1850 K Street NW., Suite 950, Washington, DC 20006
Authorized Sections of TSCA: All
Site Information: EPA Headquarters, Contractor and Subcontractor Facilities
FR Publication Date/Cite: 50 FR 38199 (9/20/85)
Extended Access Expiration Date: 9/30/88
Subcontractors:

Putman, Hayes & Bartlett, 124 Mt. Auburn Street, Cambridge, MA 02138
PEI Associates, Incorporated, 11499 Chester Road, Cincinnati, OH 45246-0100
Sobotka & Company, Incorporated, 2501 M Street NW., Washington, DC 20037
Mathtech, Incorporated, 5111 Leesburg Pike, Suite 702, Falls Church, VA 22046

Contract No.: 68-02-4246
Contract Name: Battelle Columbus
Address: 2030 M Street NW., Washington, DC 20036
Authorized Sections of TSCA: All
Site Information: EPA Headquarters Only
FR Publication Date/Cite: 51 FR 37786 (10/24/86)
Extended Access Expiration Date: 9/30/88
Subcontractors:

Westat, Incorporated, 1650 Research Boulevard, Rockville, MD 20852
Clement Associates, 1850 K Street NW., Washington, DC 20006 (Previously named K.C. Crump & Company)
Washington Consulting Group, 1625 I Street, NW., Washington, DC 20006
University of North Carolina, Dept. of Biostatistics, 401 Rosenau, 201H Chapel Hill, NC 27514

Contract No.: 68-02-4232
Contract Name: MITRE Corporation
Address: 1820 Dolley Madison Blvd., McLean, VA 22102
Authorized Sections of TSCA: All
Site Information: EPA Headquarters and Contractor Facilities
FR Publication Date/Cite: 50 FR 38199 (9/20/85)
Extended Access Expiration Date: 9/30/88

Contract No.: 68-02-4236
Contract Name: Maxima Corporation
Address: 2101 East Jefferson St. at Executive Blvd., Rockville, MD 20852
Authorized Sections of TSCA: All
Site Information: EPA Headquarters Only
FR Publication Date/Cite: 50 FR 38199 (9/20/85)
Extended Access Expiration Date: 9/30/88

Contract No.: 68-01-7282
Contract Name: CRC Systems, Incorporated
Address: 4020 Williamsburg Court, Fairfax, VA 22032
Authorized Sections of TSCA: All
Site Information: EPA Headquarters Only
FR Publication Date/Cite: 52 FR 19921 (5/28/87)
Extended Access Expiration Date: 12/31/87

Contract No.: 68-01-7176
Contract Name: CRC Systems, Incorporated
Address: 4020 Williamsburg, Fairfax, VA 22032
Authorized Sections of TSCA: 5 & 8
Site Information: EPA Headquarters Only
FR Publication Date/Cite: 51 FR 37786 (10/24/86)
Extended Access Expiration Date: 9/30/88

Contract No.: 68-01-6890
Contract Name: CRC Systems, Incorporated
Address: 4020 Williamsburg Court, Fairfax, VA 22032
Authorized Sections of TSCA: 5 & 8
Site Information: EPA Headquarters Only
FR Publication Date/Cite: 50 FR 27844 (7/8/85)
Extended Access Expiration Date: 12/31/87

Contract No.: 68-01-6973
Contract Name: Molecular Design Limited
Address: 2132 Farallon Drive, San Leandro, CA 94577
Authorized Sections of TSCA: 5, 8 & 12
Site Information: EPA Headquarters Only
FR Publication Date/Cite: 51 FR 37786 (10/24/86)
Extended Access Expiration: 9/5/88.

Contract No.: 68-01-7380
Contract Name: Chemical Abstracts Service
Address: 2540 Olentangy River Road, Columbus, OH 43210
Authorized Sections of TSCA: 5 & 8
Site Information: EPA Headquarters & Contracting Facilities

FR Publication Date/Cite: 52 FR 19197 (5/21/87)
Extended Access Expiration Date: 9/30/88

Contract No.: 68-01-6658
Contract Name: System Development Corporation
Address: P.O. Box 12314, Research Triangle Park, NC 27709
Authorized sections of TSCA: All
Site Information: EPA Headquarters & Research, Triangle Park Facilities
FR Publication Date/Cite: 52 FR 1241 (1/12/87)
Extended Access Expiration Date: 10/31/87

The contractors and subcontractors listed above that are authorized to transfer CBI materials from EPA Headquarters to their facilities will, upon completing review of the CBI materials, return them to EPA. Contractors and subcontractors requiring access to TSCA CBI at their facilities will be authorized for such access under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has received their security plans and will perform the required inspections of their facilities before CBI access at the sites will be allowed. Contractor before CBI access at the sites will be allowed. Contractor and subcontractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: October 22, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-25301 Filed 10-30-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3285-1]

Science Advisory Board, Research Strategies Committee Exposure Group; Open Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby that a one-day meeting of the Exposure Group of the Research Strategies Committee of the Science Advisory Board will be held on December 3, 1987, in Conference Room 1112, U.S. EPA, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia. The meeting will be conducted from 9:30 a.m. to 3:00 p.m. The purpose of the meeting will be to continue the development of the research strategy for exposure research.

The meeting will be open to the public. Any member of the public wishing to attend the meeting must contact Mr. Robert Flaak, Executive Secretary to the Committee by telephone at (202) 382-2552 or by mail to Science Advisory Board (A-101F), 401 M Street SW., Washington, DC 20460 no later than c.o.b. November 30, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

Date: October 23, 1987.

[FR Doc. 87-25300 Filed 10-30-87; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Advisory Committee of the Export-Import Bank of the United States; Open Meeting

Summary: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, November 17, 1987 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Program Update, Working Capital Guarantees (1987 Results), Legislative Update, Report of State/Municipal/City Task Force, and other topics.

Public Participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871, not later than November 16, 1987. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to November 10, 1987 the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

Further Information: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871.

Hart Fessenden,

General Counsel.

[FR Doc. 87-25285 Filed 10-30-87; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 87-1110]

Approval of Conversion Application; Withdrawal of Approval; Home Federal Savings and Loan Association of Washington

Date: October 27, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Approval of conversion application; withdrawal.

SUMMARY: On October 16, 1987, the Federal Home Loan Bank Board ("Board") published notice of approval of the coversion application of Home Federal Savings and Loan Association of Washington, DC, on October 13, 1987. *See* 52 FR 38525 (October 16, 1987). This was an inadvertent publication and is hereby withdrawn.

EFFECTIVE DATE: This withdrawal is effective October 21, 1987.

FOR FURTHER INFORMATION CONTACT: Bravitt C. Manley, Jr., Attorney, (202) 377-7505, or J. Larry Fleck, Associate General Counsel, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-25342 Filed 10-30-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-670; FHLBB No. 0006]

Final Action; Approval of Conversion Application; Standard Federal Savings and Loan Association, Columbia, SC

Date: October 27, 1987.

Notice is hereby given that on October 23, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Standard Federal Savings and Loan Association, Columbia, South Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G

Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-25341 Filed 10-30-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010776-021.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Barber Blue Sea
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Lines
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment amends the neutral body policing rules with respect to cargoes moving from the Far East to Canada to provide that if, in the course of any investigation on a specific complaint, the Neutral Body finds evidence of a malpractice on a different Canadian matter, it is authorized to act on that additional matter as though it were a formal complaint.

Agreement No.: 203-011153.

Title: Hanjin Container Lines, Ltd. Korea Shipping Corporation Facilitation Agreement.

Parties:

Hanjin Container Lines, Ltd.
Korea Shipping Corporation

Synopsis: The proposed agreement would permit the parties to coordinate their services in the transpacific trades, and includes authority to charter space on each other's vessels, rationalize sailings, interchange equipment and share facilities. The parties will remain competitors and will have no obligation to adhere to any agreement reached, other than voluntarily. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 27, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-25257 Filed 10-30-87; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 202-010689-028]

Transpacific Westbound Rate Agreement; Correction

In the **Federal Register** notice of October 26, 1987 (52 FR 39994), Synopsis, sub-section (2), the reference to "one of the objecting parties" should have read "the proposing party." By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 28, 1987.

[FR Doc. 87-25303 Filed 10-30-87; 8:45 am]

BILLING CODE 6730-01-M

Shipping Act of 1984; Survey of Ocean Common Carriers

The Federal Maritime Commission recently sent surveys to ocean common carriers offering liner service in the United States foreign waterborne commerce seeking their views as to the impact of the U.S. Shipping Act of 1984. The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act. The Commission has been directed by the U.S. Congress to "collect and analyze information concerning the impact of this Act upon the international shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one-half years after enactment of the Act.

The Commission would like its survey to have the widest possible distribution. All interested ocean common carriers offering liner service who have not received a copy of the survey are urged to contact: Sandra Kusumoto, Bureau of Economic Analysis, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, Tel. (202) 523-5870.

Joseph C. Polking,

Secretary.

Dated: October 28, 1987.

[FR Doc. 87-25305 Filed 10-30-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

October 27, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer, Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer, Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202-395-7340)

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Reports

1. *Report title:* Weekly Report of Assets and Liabilities for Large Banks and Weekly Report of Selected Assets.

Agency Form Number: FR 2416 and 2644, respectively.

OMB Docket Number: 7100-0075.

Frequency: Weekly.

Reporters: U.S. commercial banks.

Annual Reporting Hours: 48,573 hours. Small businesses are not affected.

General Description of the Report: This information collection is voluntary (12 U.S.C. 225(a) and 248(a)) and is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

These reports provide basic data from U.S. commercial banks for estimating bank credit and nondeposit funds and for analyzing banking and monetary developments. The proposed revisions affect the FR 2416 report, and include minimal changes to the current reporting panel, two changes in content to

improve monitoring of bank investment policy and estimation of components of the broad monetary aggregate, L, and elimination of one item.

2. *Report Title:* Domestic Finance Company Report of Assets and Liabilities.

Agency Form Number: FR 2248 and FR 2248a.

OMB Docket Number: 7100–0005.

Frequency: The FR 2248 is filed at the end of each month, except for March, June, September and December, which is when the FR 2248a is filed.

Reporters: Domestic finance companies.

Annual Reporting Hours: 2,045 hours. Small businesses are affected.

General Description of Report: This information collection is voluntary (12 U.S.C. 225(a)) and is given confidential treatment (5 U.S.C. 552(b) (4) and (8)).

These reports collect information on major categories of consumer and business credit extended and held by finance companies and on major short-term liabilities outstanding. These data are used by the Federal Reserve for assessing aggregate credit market activity. The proposed revisions include a substantial reduction in the approved size of the panel, the consolidation of the two report forms into one, and several item changes designed to reduce the average response time.

3. *Report Title:* Senior Loan Officer Opinion Survey on Bank Lending Practices.

Agency Form Number: FR 2018.

OMB Docket Number: 7100–0058.

Frequency: Up to six times per year.

Reporters: Large U.S. commercial banks.

Annual Reporting Hours: 720 hours. Small businesses are not affected.

General Description of the Report: This information collection is voluntary (12 U.S.C. 248(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This survey, in which responses are collected through a telephone interview with a senior loan officer at each of 60 large commercial banks, collects qualitative information about changes in business loan demand and various aspects of bank lending practices. It serves as a very important tool for monitoring and understanding the evolution of lending practices at banks and developments in credit markets generally. The proposed revision will reduce the number of authorized surveys from eight to six per year.

4. *Report Title:* Monthly Survey of Eligible Bankers Acceptances.

Agency Form Number: FR 2006.

OMB Docket Number: 7100–0055.

Frequency: Monthly.

Reporters: U.S. commercial banks, U.S. branches and agencies of foreign banks and Edge corporations.

Annual Reporting Hours: 3,236 hours. Small businesses are not affected.

General Description of the Report: This information collection is voluntary (12 U.S.C. 248(a), 625, and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b) (4) and (8)).

This report provides timely and detailed information on eligible dollar acceptances that are payable in the United States. The data are used in constructing monetary and credit aggregates and are relied upon to provide information on the acceptance market to the Federal Reserve's trading desk. A reduction of 40 percent in panel size is proposed, owing to a modification in the reporting threshold to limit coverage to only those banks with more than $100 million in total acceptances, up from the current minimum of $50 million. Two minor modifications in item content would reduce burden slightly.

Board of Governors of the Federal Reserve System, October 27, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–25254 Filed 10–30–87; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; John L. Lillibridge, et al.

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 November 17, 1987.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. John L. Lillibridge, Burke, South Dakota, and Thomas L. Lillibridge, Bonesteel, South Dakota; each to acquire 50 percent of the voting shares of Fidelity Corporation, Burke, South Dakota, and thereby indirectly acquire First Fidelity Bank, Burke, South Dakota.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Israel Feurzeig*, San Diego, California, and Murray L. Galinson, San Diego, California; each to acquire up to 24.99 percent of the voting shares of SDNB Financial Corp., San Diego, California, and thereby indirectly acquire San Diego National Bank, San Diego, California.

Board of Governors of the Federal Reserve System, October 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–25255 Filed 10–30–87; 8:45 am]

BILLING CODE 6210–01–M

Application To Engage in Investment Advisory and Securities Brokerage Services; Sovran Financial Corp., Norfolk, VA

Sovran Financial Corporation, Norfolk, Virginia ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3), for permission to engage through its subsidiary, Sovran Investment Corporation, Richmond, Virginia ("Company"), in the activities of purchasing and selling as agent for its corporate and other institutional customers a limited range of non-bank eligible securities and providing, on occasion, non-fee investment advice in connection with the brokerage activity. Company is currently engaged in a number of securities-related activities.

The Board previously has determined that the combined offering of investment advice with securities brokerage services to institutional customers from the same bank holding company subsidiary is a permissible nonbanking activity and does not violate the Glass-Steagall Act. *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986); *J.P. Morgan and Company, Inc.*, 73 Federal Reserve Bulletin _____ (Order dated August 5, 1987); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin _____ (Order dated October 1, 1987). In those cases, however, the Board required certain commitments from the applicants. Applicant has offered many, but not all of these commitments. Specifically, Applicant will have interlocking officers and directors between Company and Applicant (as was the case in *Manufacturers Hanover Corporation*,

supra.) and, in the case of certain officers, between Company and its affiliate banks. Further, Company would exchange customer lists with its affiliates, and although it would not generally permit the exchange of confidential information concerning its customers from its affiliate banks to Company, it would permit such exchange where such information might be used by Company in making credit decisions with respect to particular customers.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than Friday, November 13, 1987. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-25256 Filed 10-30-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abyse, and Mental Health Administration

Mental Health Services Demonstration Grants for Child and Adolescent Service System Program (CASSP)

AGENCY: National Institute of Mental Health, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Mental Health (NIMH) announces the availability of Mental Health Service Demonstration Grants for Child and Adolescent Service System Program (CASSP) projects for seriously emotionally disturbed children and adolescents, MH-87-22. These grants will be made under the authority of section 504(f) of the Public Health Service Act (42 U.S.C. 290aa-3).

The major goals of CASSP are to: (1) Develop leadership capacity and increase priority in allocation of resources for child and adolescent mental health services at the State level; and (2) improve the availability of continuums of care for severely emotionally disturbed children and adolescents at the community level, and thus improve the availability and access to appropriate services across child service systems.

In Fiscal Year 1988, four types of grants will be funded, (1) State-level service system development, (2) Community-level service system development, (3) State-level capacity building, and (4) State system building grant renewal (competing continuations). It is estimated that $750 thousand will be available to fund 5-7 State and Community level service system development projects, $250 thousand will be available for 4-6 State capacity building projects, and $2.4 million will be available for 18 State system building renewal projects. However, the amount of funding available will depend on appropriated funds and program priorities at the time of award.

NIMH is limiting potential applicants under this announcement to State mental health authorities, other State agencies in which the statewide responsibility for child mental health resides, or other State child services coordinating organizations as designated by the Governor. There are several reasons for this eligibility restriction. Since these grants are for service system development for severely emotionally disturbed children and adolescents at State and then the local level, it is imperative that the proper State mental health financing and planning authority be the entity from which the grant activities are performed. The degree of coordination across State agencies required to develop the type of systems needed by the target population can best happen at the State level. Local level projects are more likely to be successful when they result from a State level planning process. Prior NIMH demonstration efforts under section 504(f) of the PHS Act with the NIMH Community Support Program (CSP) have shown the State mental health authorities to be extremely effective in stimulating the development of coordinated community-based services. Finally, if these systems of care are to survive beyond the period of Federal funding, it is probable that the main source of funding will come from State mental health authorities and other related State human service agencies.

Eligible State agencies may apply for only one new CASSP grant under this announcement, with the exception that current State grantees who are applying for a competing Renewal may also apply for a related community-level project. In making application for assistance, the applicant must designate the type of grant (State-level, Capacity building, Renewal, or Community-level) for which it is applying.

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372 allows States/territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit (Form PHS-5161) will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for the State review, applicants are advised to discuss projects with and provide copies of their applications to State contact points as early as possible.

Receipt and Review Procedures for Applications

Applications in response to this announcement will be accepted under the single receipt date of January 4, 1988. The following criteria will be used in the review of applications: Clarity of statement of need for project and quality of problem definition in the narrative; evidence of familiarity with CASSP concepts; strength of the State-level plan and strategy concerning services for severely emotionally disturbed children and adolescents; projected role of families of severely emotionally disturbed children and adolescents in the demonstration projects; emphasis on the special needs of minority families represented in the project; feasibility of the proposed project and likelihood that it will significantly address program gaps and improve services and opportunities for the target population; capability and experience of project director, consultants, and other key staff proposed for the project and adequacy of staffing plan; evidence of activities directed at developing continued funding support for the project after the grant is terminated; clarity and feasibility of evaluation plans; and, quality of plan to disseminate project findings.

For additional program guidance, potential applicants should contact: Ira S. Lourie, M.D., Assistant Chief, Community Service Systems Branch, National Institute of Mental Health, Room 7C-14, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1333.

The Catalog of Federal Domestic Assistance number for this program is 13.125.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-25268 Filed 10-30-87; 8:45 am]

BILLING CODE 4160-20-M

Mental Health Services Demonstration Grants for Severely Mentally Ill Adults

AGENCY: National Institute of Mental Health, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Mental Health (NIMH) announces the availability of Mental Health Services Demonstration Grants for adults with severe, long-term mental illness, MH-87-24. These grants will be made under the authority of section 504(f) of the Public Health Service Act (42 U.S.C. 290aa-3), which authorizes funds for demonstrations of mental health services for the long-term, severely mentally ill population.

The goals of this program are: To respond to the needs of severely mentally ill adults, with an emphasis on persons at risk of being homeless, to support State level leadership to focus on their service needs; to stimulate the development of local comprehensive, integrated systems of mental health and other supportive services; to foster the development of cost-effective consumer-operated, self-help approaches; and to address the largest service gap (permanent, rehabilitative housing) for the priority population.

Addressing the need for rehabilitative housing will be accomplished through supporting the development, evaluation, dissemination, and utilization of approaches to providing supportive housing linked to flexible services, and through the implementation of a national Community Residential Services Technical Assistance (TA) center to focus on all aspects of developing supportive housing for the population.

In fiscal year 1988, it is estimated that $7 million will be available to fund approximately 14 Community Support Program (CSP) Service System Improvement Projects to stimulate State level leadership (average award of $50,000); $2 million to fund approximately 4 CSP Comprehensive Community Systems Change Projects to build integrated, coordinated community service systems (average award of $500,000); $750,000 to fund approximately 6 CSP Local Consumer-Operated Services Demonstration Projects (average award of $125,000); $750,000 to fund approximately 6 CSP Local Supportive Housing Demonstration Projects (average award of $125,000); and $250,000 to fund one CSP Community Residential Services TA Center.

NIMH is limiting potential applicants for State and local demonstrations under this announcement to State mental health authorities. There are three reasons for this eligibility restriction. First, because multiple agencies and providers will be involved at both the State and local levels in coordinating these demonstration initiatives, centralized State assistance is needed to assure that sufficient resources will be allocated to the project and appropriate staff and organizations will be involved. The State mental health authorities are best qualified to undertake this coordination function, since they oversee a wide range of mental health service providers. Prior NIMH demonstration efforts under section 504(f) of the PHS Act [NIMH Community Support Program (CSP) and Child and Adolescent Service Systems Program (CASSP)] have shown the State mental health authorities to be extremely effective in stimulating the development of coordinated community-based services.

Second, a related Federal initiative focused on the long-term mentally ill population, authorized under Pub. L. 99-660, The State Comprehensive Mental Health Planning Act, requires State governments to coordinate services for these persons. Finally, if these systems of care and programs are to survive beyond the period of Federal funding, it is probable that the main source of funding will come from State mental health authorities and other related State human service agencies. Based on previous program experience, involving States in the demonstration projects greatly increases the probability that they will provide continuation funding for projects.

Potential applicants for the Community Residential Services TA Center include any public or private non-profit organization.

In making application for assistance, the State mental health authority must designate the type of grant (CSP Service System Improvement, CSP Comprehensive Community Systems Change, CSP Local Supportive Housing Demonstration, CSP Local Consumer-Operated Services Demonstration, or CSP Community Residential Services TA Center) for which it is applying and identify the community and the organization(s) that will carry out the demonstration activities at the local level. Each State may submit only one application for each of the above designated types of grants. States that currently have a CSP Service System Improvement Grant are not eligible to apply for another one.

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372 allows States/territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit (Form PHS-5161) will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for the State review, applicants are advised to discuss projects with and provide copies of their applications to State contact points as early as possible.

Receipt and Review Procedures for Applications

Applications in response to this announcement will be accepted under the single receipt date of January 11, 1988. Applications received after this date will not be reviewed. The following criteria will be used in the review of applications: Clarity of discussion of the barriers and problems that the proposed project will address; quality of the proposed approach including clear evidence of involvement by all necessary entities; adequacy of resource utilization, project staffing, and project management plans; relevance of proposed project for ethnic and racial minority persons; quality of the proposed project evaluation plan; qualifications and prior experience of the proposed staff and consultants in working with the target population; and adequacy and feasibility of proposed plans for continued funding of the project after the demonstration period.

For additional program guidance, potential applicants should contact:

Neal Brown, Chief, Community Service Systems Branch, Division of Education and Service Systems Liaison, National Institute of Mental Health, 5600 Fishers Lane, Room 11C-22, Rockville, Maryland 20857, Telephone: (301) 443-3653

The Catalog of Federal Domestic Assistance number for this program is 13.125.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-25269 Filed 10-30-87; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 87F-0330]

Keller and Heckman; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Keller and Heckman has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1,3-dione for grafting onto ethylene homopolymers complying with 21 CFR 177.1520(c), item 2.2.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4043) has been filed by Keller and Heckman, 1150 17th St. SW., Washington, DC 20036, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) of the food additive regulations be amended to provide for the safe use of 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1,3-dione for grafting onto ethylene homopolymers complying with 21 CFR 177.1520(c), item 2.2.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 20, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-25307 Filed 10-30-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council's Land Use Advisors Committee; Public Invitation Soliciting Nominations

The Federal and State Cochairmen of the Alaska Land Use Council are soliciting nominations for appointment or reappointment to the Council's Land Use Advisors Committee.

The Land Use Advisors Committee is mandated by section 1201(m) of the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980. The Committee plays a key role in the public participation program established by the Alaska Land Use Council. Among other responsibilities, the Committee makes recommendations to the Council concerning actions of the Federal agencies as they implement the Alaska lands legislation and the Council's annual work program.

The Alaska Lands Act requires that the Land Use Advisors Committee be representative of a balance between State and national interests concerned with the use of federally-owned public lands and resources in Alaska and the several geographic regions of the State. Members of the Committee are appointed jointly by the two Cochairmen and serve without compensation but are reimbursed for necessary travel expenses.

If you are interested in serving on the Alaska Land Use Council's Land Use Advisors Committee, send a letter of interest along with a detailed resume to:

Alaska Land Use Council, Office of the Federal Cochairman, 1689 C Street, Suite 100, Anchorage, Alaska 99501, (907) 272-3422, (FTS) 271-5485

Alaska Land Use Council, State Cochairman Designee, Division of Governmental Coordination, 2600 Denali St., Suite 700, Anchorage, Alaska 99503, (907) 274-3528

The deadline for filing your letter of interest is December 1, 1987. These appointments are for one calendar year, January 1, 1988, through December 31, 1988. For further information, you may write to either of the above addresses or call.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-25290 Filed 10-30-87; 8:45 am]

BILLING CODE 4310-10-M

Alaska Land Use Council; Public Meeting

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980, section 1201, Paragraph (h), the Alaska Land Use Coucil will meet at 8:00 a.m., Tuesday, November 24, 1987, in the Legislative Affairs Agency, 311 C Street Anchorage, Alaska.

At 8:00 a.m., the Alaska Land Use Council will meet in joint session with the Council's Land Use Advisors Committee. The regularly scheduled quarterly meeting of the Council will begin immediately after the joint session with the Advisors Committee is concluded.

The tentative agenda for the Council meeting will include consideration of:

—Draft ROD's for the U.S. Fish and Wildlife Service Comprehensive Conservation Plans for the Alaska Peninsula NWR, the Innoko NWR, the Kodiak NWR, the Koyukuk NWR, the Nowitna NWR, the Selawik NWR, the Tetlin NWR, and the Yukon Flats NWR.

—Briefing on the Status of the Council's Project on the Wilderness Review Provision of ANILCA section 1317 by the National Park Service and the U.S. Fish and Wildlife Service.

—Briefing on the Denali National Park and Preserve Land Exchange Proposal by the National Park Service and the State of Alaska.

—Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or matters of general concern to the Council should contact either Cochairman's office before the close of business Tuesday, November 10, 1987.

FOR FURTHER INFORMATION CONTACT:

Alaska Land Use Council, Office of the Federal Cochairman, 1689 C Street, Suite 100, Anchorage, Alaska 99501, (907) 272-3422 (FTS) 271-5485

Alaska Land Use Council, Office of the State, Cochairman Designee, P.O. Box AW, Juneau, Alaska 99811, (907) 465-3562

or

2600 Denali St., Suite 700, Anchorage, Alaska 99503, (907) 274-3528

The public is invited to attend.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-25289 Filed 10-30-87; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

October 19, 1987.

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 within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone, 202–395–7313.

Title: Additional Requirements for Trust Responsibilities, 25 CFR 271.33

Abstract: Indian tribes which are preparing contract applications which involve Bureau trust responsibilities in the area of natural resources provide additional information to assure the protection, preservation and perpetuation of such resources, to ensure fair market value to tribes or individual Indians and that no delegation of trust responsibility occurs.

Frequency: Upon initial application.

Description of Respondents: Indian tribes contracting Bureau programs in the area of natural resources.

Annual Responses: 74.

Annual Burden Hours: 2,300.

Bureau Clearance Officer: Cathie Martin, 202–343–3577.

Hazel E. Elbert,

Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).

[FR Doc. 87–25293 Filed 10–30–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Availability of San Juan River Regional Coal Environmental Impact Statement Record of Decision, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: On October 26, 1987, Larry Woodward, New Mexico State Direcor, BLM, signed the Record of Decision (ROD) for the San Juan River Regional Coal Environment Impact Statement (SJRRCEIS). This ROD documents the approval of a portion of the Preferred Alternative of the Final SJRRCEIS of March 1984 and also documents the deferral of the remainder of the alternative.

The State Director had decided to defer any decision on where or when to conduct competitive coal leasing until the Regional Coal Team (RCT) convenes and issues its recommendations. At a later date a supplemental ROD will be issued. It will include consideration of the RCT recommendations. The State Director has also decided to fully adjudicate the 26 Preference Right Lease Applications (PRLAs) applying the mitigation measures, listed in Appendix 3 of the ROD. The results of this will be that approximately 1.6 billion tons of coal will be recovered in addition to the 3 billion tons recoverable under the No Action Alternative of the Final SJRRCEIS.

ADDRESS: A copy of the Draft or Final SJJRRCEIS may be reviewed at the New Mexico State Office, Joseph M. Montoya Federal Building, Room 313, South Federal Place, P.O. Box 1449, Santa Fe, NM 87504–1449. Copies of the ROD are available at the same address or can be obtained by calling (505) 988–6000.

FOR FURTHER INFORMATION CONTACT: Ron Fellows, Farmington Resource Area Manager at Caller Service 4104, Farmington, NM 87499–4104: telephone (505) 325–4572 or FTS 476–6441.

SUPPLEMENTARY INFORMATION: The ROD incorporates resource information gathered since the completion of the Final SJRRCEIS. The effects of the new data have been determined to fall within the range of impacts analyzed in the alternatives, therefore, a new analysis of environmental impacts is not required. This data is available in the ROD, which is being sent to all parties who received the Final SJRRCEIS.

Larry L. Woodard,

State Director.

[FR Doc. 87–25144 10–30–87; 8:45 am]

BILLING CODE 4310–FB–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31137]

Railroad Operations; Mt. Hood Railroad Co.; Exemption Acquisition and Operation; Oregon-Washington Railroad & Navigation Co., Mt. Hood Railway Co. and Union Pacific Railroad Co.

Mt. Hood Railroad Company has filed a notice of exemption to acquire and operate 21.085 miles of rail line owned by Oregon-Washington Railroad & Navigation Company Mt. Hood Railway Company, and Union Pacific Railroad Company between Milepost 0.05 at Hood River, OR, and Milepost 21.135 at Parkdale, OR, all in Hood River County, OR. Any comments must be filed with the Commission and served on William C. Evans, Suite 1000, 1660 L Street NW., Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 20, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–25166 Filed 10–30–87; 8:45 am]

BILLING CODE 7034–01–M

[Finance Docket No. AB–55 (Sub–No. 216X)]

Railroad Services; CSX Transportation, Inc.; Exemption; Abandonment in Osceola and Clare Counties, MI

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 23.66-mile line of railroad between milepost 75.66 at or near Evart, MI, and milepost 52.00 at or near Clare, MI, in Osceola and Clare Counties, MI.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate state agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective December 2, 1987, unless stayed pending reconsideration. Petitions to stay must be filed by November 12, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 23,

1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Lawrence H. Richmond, Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201

Charles M. Rosenberger, Patricia Vail, 500 Water Street, Jacksonville, FL 32202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 19, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-25165 Filed 10-30-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Attorney General Order No. 646-76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960-81, Reorganization Regulations, published in the **Federal Register** October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prisons institutions. In this present document, the Bureau is publishing a consolidated listing of its institutions, and is designating a new Federal Prison Camp at Tyndall Air Force Base, Florida. The institution is expected to open later this year.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534 (202-272-6874).

SUPPLEMENTARY INFORMATION: This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, section 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 4001, 4003, 4042, 4081, and 4082 and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Atlanta, Georgia;
(2) Leavenworth, Kansas;
(3) Lewisburg, Pennsylvania;
(4) Lompoc, California;
(5) Marion, Illinois; and
(6) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Alderson, West Virginia;
(2) Ashland, Kentucky;
(3) Bastrop, Texas;
(4) Butner, North Carolina;
(5) Danbury, Connecticut;
(6) El Reno, Oklahoma;
(7) Englewood, Colorado;
(8) Fort Worth, Texas;
(9) La Tuna, Texas;
(10) Lexington, Kentucky;
(11) Loretto, Pennsylvania;
(12) Memphis, Tennessee;
(13) Milan, Michigan;
(14) Morgantown, West Virginia;
(15) Otisville, New York;
(16) Oxford, Wisconsin;
(17) Petersburg, Virginia;
(18) Phoenix, Arizona;
(19) Pleasanton, California;
(20) Ray Brook, New York;
(21) Safford, Arizona;
(22) Sandstone, Minnesota;
(23) Seagoville, Texas;
(24) Talladega, Alabama;
(25) Tallahassee, Florida;
(26) Terminal Island, California;
(27) Texarkana, Texas; and
(28) Tucson, Arizona.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Allenwood, Pennsylvania;
(2) Big Spring, Texas;
(3) Boron, California;
(4) Duluth, Minnesota;
(5) Eglin Air Force Base, Florida;
(6) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama; and
(7) Tyndall Air Force Base, Florida.

D. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York; and
(4) San Diego, California.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institution at Rochester, Minnesota is designated as the Federal Medical Center.

G. The Bureau of Prisons institution at Oakdale, Louisiana is designated as the Federal Detention Center.

J. Michael Quinlan,

Director, Bureau of Prisons.

[FR Doc. 87-25302 Filed 10-30-87; 8:45 am]

BILLING CODE 4410-05-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RI 87-5]

Request for Information, Eleventh Amendment

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for information.

SUMMARY: This Request for Information is issued to advise the public that the Copyright Office of the Library of Congress is investigating the issue of states' Eleventh Amendment immunity from suit for money damages in copyright infringement cases. The purpose of this notice is to elicit public comments, views, and information which will inform the Copyright Office as to (1) any practical problems faced by copyright proprietors who attempt to enforce their claims of copyright infringement against state government infringers, and (2) any problems state governments are having with copyright proprietors who may engage in unfair copyright or business practices with respect to state governments' use of copyrighted materials. The Copyright Office also invites comment concerning the legal interpretation of Eleventh Amendment immunity in copyright infringement cases.

DATE: Comments should be received on or before February 1, 1988.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Office of the General Counsel, Copyright Office, Library of Congress, Department 100, Washington, DC 20559.

If delivered by hand, copies should be brought to: Office of the General Counsel, U.S. Copyright Office, James

Madison Memorial Building, Room 407, First and Independence Avenues SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Department 100, Washington, DC 20559. Telephone: (202) 287–8380.

SUPPLEMENTARY INFORMATION: At the request of the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary, the Copyright Office is conducting a study and preparing a report [1] on the issue of states' immunity from suit for money damages in copyright infringement cases.

The Copyright Act of 1976, Title 17 of the United States Code, grants copyright owners certain exclusive rights in their works. 17 U.S.C. 106. Although 28 U.S.C. 1338(a) grants Federal courts exclusive subject matter jurisdiction over cases concerning the Federal copyright law, the Eleventh Amendment to the Constitution generally prohibits Federal courts from entertaining suits brought by citizens of one state against another state. The question has arisen whether Congress, in enacting the Copyright Act of 1976 under the Copyright Clause of the Constitution, has subjected the states to copyright liability and overcome any claim of immunity under the Eleventh Amendment.[2]

In actual practice, most state agencies have traditionally recognized the rights of copyright owners and have paid royalties for their use of copyrighted works. At least eight state Attorneys General have issued opinions interpreting the Copyright Act to provide guidance for a state and its agencies.[3] This suggests that these states recognized their liability under the federal copyright statutes. However, a recent line of Federal court cases interpreting the application of states' Eleventh Amendment immunity in copyright infringement cases might influence states to change their practices of recognizing the rights of copyright owners. Applying recent Supreme Court decisions in Eleventh Amendment cases (not involving copyright law), Federal district courts in five states have found state governments immune from suit for money damages in copyright infringement lawsuits.[4]

Concern has been expressed about these cases because they appear to remove copyright owners' only pecuniary remedy against state governments that violate Federal copyright law. On the other hand, it is sometimes alleged that some copyright owners or their representatives may put undue pressure on state governments to pay for their uses of copyrighted works that might, in fact, be "fair use" under section 107 of the Copyright Act of 1976 or exempt under another provision of the Act.

By letter dated August 3, 1987, the Subcommittee requested that the Copyright Office completely assess the nature and extent of the clash between the Eleventh Amendment and Federal copyright law. As a part of this assessment, the Subcommittee specifically instructed the Office to conduct the following inquiries:

(1) An inquiry concerning the practical problems relative to the enforcement of copyright against state governments;

(2) An inquiry concerning the presence, if any, of unfair copyright or business practices vis a vis state governments with respect to copyright issues.

It is the purpose of this Request for Information to solicit public comments, views, and information which will inform the Copyright Office on these issues.

The Copyright Office also invites comments and arguments concerning the legal interpretation of Eleventh Amendment immunity in copyright infringement cases.

Dated: October 19, 1987.

Ralph Oman,

Register of Copyrights.

Approved:

William J. Welsh,

Acting Librarian of Congress.

[FR Doc. 87–25288 Filed 10–30–87; 8:45 am]

BILLING CODE 1410–07–M

[1] This is not in any sense a rulemaking proceeding. The Office will, however, seek the widest possible public comment through this publication in the **Federal Register** and through other channels, such as associations representing state government and copyright interests.

[2] The same issue arose under the Copyright Act of 1909, Title 17 U.S.C. in effect through December 31, 1977; the Ninth Circuit in *Mills Music, Inc. v. State of Arizona*, 591 F.2d 1278 (9th Cir. 1979) held that states were not immune to copyright damage suits under the Eleventh Amendment, on the ground of the Copyright Clause. In this Request for Information we focus on the interpretation of the current Act because any cause of action against a state presumably arises under the Copyright Act of 1976, effective January 1, 1978.

[3] 107 Op. Att'y. Gen. Alas. (1983); 366 Inf. Op. Att'y Gen. Alas. 404 (1982); 187 Slip Op. Att'y Gen. Ariz. 106 (1986); 65 Op. Att'y Gen. Cal. 106 (1982); 64 Op. Att'y Gen. Cal. 186 (1981); 82 Op. Att'y Gen. Fla. 148 (1982); Slip. Op. Att'y Gen. Kan. 202 (1981); 84 Slip Op. Att'y Gen. La. 436 (1985); 82 Slip Op. Att'y Gen. La. 662 (1982); Slip Op. Att'y Gen. S.C. (1977); 82 Slip Op. Att'y Gen. Ut. 03 (1982).

[4] See *BV Engineering v. Univ. of California, Los Angeles*, CV 86–4708, slip. op., 3 U.S.P.Q. 2d 1054 (D.C. Calif. April 17, 1987); *Mihaleck Corp. v. Michigan*, 595 F. Supp. 903 (E.D. Mich. 1984), *aff'd on other grounds*, 814 F.2d 290 (6th Cir. 1987); *Cardinal Indus. v. Anderson Parrish Assoc.*, No. 83–1038–Civ–T–13 (M.D. Fla. Sept. 6, 1985), *aff'd* 811 F.2d 609 (11th Cir. 1987); *Richard Anderson Photography v. Radford Univ.*, 633 F. Supp. 1154 (W.D. Va. 1986); *Woelffer v. Happy States of Am., Inc.*, 626 F. Supp. 499 (N.D. Ill. 1985).

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Environmental Assessment and Finding of No Significant Impact; Commonwealth Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Section III.G of Appendix R to 10 CFR Part 50 to the Commonwealth Edison Company (CECo) (the licensee) for the Zion Nuclear Power Station, Units 1 and 2, located at the licensee's site in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant six exemptions from requirements of Section III.G of Appendix R to 10 CFR Part 50 consisting mainly of requirements for automatic area-wide fire suppression systems and separation between components.

Need for the Proposed Action

Existing and proposed fire protection features at Zion Units 1 and 2 accomplished the underlying purpose of the rule in that they provide an equivalent level of protection. Implementing additional modifications to provide additional suppression systems, detection systems, and fire barriers would require the expenditure of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the licensee's resources. The staff has concluded that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50.

Environmental Impact of the Proposed Action

Upon the review of the requested exemptions, the staff has concluded that the level of fire safety in the affected areas is equivalent to that achieved by compliance with technical requirements

of Section III.G of Appendix R. Therefore, fire-related radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposure. With regard to potential nonradiological impacts, the proposed exemptions do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commissions concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of Section III.G of Appendix R. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission had determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated July 27, 1984, as supplemented by letters dated August 31, 1984, January 24, 1985, February 18, 1986 and February 9, 1987. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Bethesda, Maryland, this 26th day of October 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-25315 Filed 10-30-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on November 5-7, 1987, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on October 19, 1987.

Thursday, November 5, 1987

8:30 a.m.-8:45 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 a.m.-10:15 a.m.: Management of Resources (Closed)—Discuss internal allocation and management of agency resources to provide advice regarding regulation of nuclear radioactive waste.

This portion of the meeting will be closed to discuss information that involves the internal personnel rules and practices of the agency and information the release of which would represent an unwarranted invasion of personal privacy.

10:30 a.m.-11:30 a.m.: Station Blackout (Open)—Briefing and discussion regarding proposed NRC Staff resolution of USI A-44, Station Blackout and related activities of NUMARC.

11:30 a.m.-12 Noon: Decay Heat Removal (Open)—Report by ACRS Subcommittee chairman regarding the status of resolution of USI A-45, Shutdown Decay Heat Removal Requirements.

1:00 p.m.-2:00 p.m.: Management Meeting (Closed)—Meeting with NRC Commissioners to discuss internal allocation and management of resources to provide advice regarding regulation of nuclear radioactive waste.

This session will be closed to discuss information that involves the personnel rules and practices of the agency and information the release of which would represent an unwarranted invasion of personal privacy.

2:15 p.m.-3:45 p.m.: TVA Nuclear Power Plant Operations (Open)—Consider proposed TVA Corporate Management Plan and resolution of deficiencies associated with design, construction, and operation of TVA nuclear power plants, including proposed restart of the Sequoyah Nuclear Station.

3:45 p.m.-5:15 p.m.: Use of Probabilistic Risk Assessment (Open)—Briefing and discussion of NRC Staff response to ACRS recommendations regarding use of NUREG-1150, Reactor Risk Reference Document in the regulatory process.

5:15 p.m.-5:45 p.m.: ACRS Future Activities (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

Friday, November 6, 1987

8:30 a.m.-10:00 a.m.: Safety Implications of Control Systems (Open)—Discuss proposed resolution of USI A-47, Safety Implications of Control Systems, and applicable comments by Mr. D. Basdekas, NRC Staff, regarding this matter as it relates to Babcock and Wilcox nuclear steam generating systems.

10:15 a.m.-12:15 p.m.: Nuclear Waste Management (Open)—Discuss proposed radiation protection standards for low-level nuclear waste and related radwaste matters.

1:15 p.m.-2:15 p.m.: Westinghouse Advanced PWR (Open)—Briefing and discussion regarding WAPWR (RESAR SP-90) design features.

2:15 p.m.-3:00 p.m.: Systematic Assessment of Operating Experience (Open)—Report by ACRS Subcommittee chairman and discussion of AEOD evaluation of nuclear power plant operating experience.

3:15 p.m.-4:15 p.m.: NRC Technical Specification Policy Statement (Open)—Briefing by NRC Staff representatives and discussion of proposed NRC policy statement regarding changes in technical specifications for nuclear power plants.

4:15 p.m.-5:15 p.m.: Long Range ACRS Activities (Open)—Report of ACRS subcommittee and discussion of ACRS role and objectives as NRC advisors.

5:15 p.m.-5:45 p.m.: Selection of ACRS Officers (Closed)—Report and discussion of the qualifications of candidates proposed as ACRS officers for CY 1988. Selection of Member-at-Large to ACRS Planning Subcommittee.

This section will be closed to discuss information of a personal nature the release of which would represent a clearly unwarranted invasion of personal privacy.

Saturday, November 7, 1987

8:30 a.m.-12:30 p.m. and 1:30 p.m.-2:30 p.m.—Preparation of ACRS Reports (Open)—Discuss proposed ACRS

reports regarding items considered during this meeting and safety-related matters, including the proposed NRC Integrated Safety Assessment Program, the Nuclear Energy Reorganization Act of 1987, nuclear radwaste research, and instrument air systems.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attent should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information related to the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)) and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: October 27, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–25313 Filed 10–30–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co. et al., Comanche Peak Steam Electric Station, Units 1 and 2; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Special Projects, has issued a decision concerning a Petition filed with the Nuclear Regulatory Commission (NRC) on March 19, 1984, by the Government Accountability Project on behalf of Citizens Association for Sound Energy and several nuclear workers at the Comanche Peak Steam Electric Station. The Petition requested that the NRC take certain actions with respect to alleged serious construction and documentation deficiencies at the Comanche Peak Steam Electric Station of the Texas Utilities Electric Company, *et al.* (Licensees). Relief requested included immediate suspension of construction and the construction permit for the Comanche Peak facility, a special NRC inspection at the facility, an independent design and construction verification program to assess the integrity of the Comanche Peak Quality Assurance Program, and a comprehensive management audit of the Licensees' officials by an independent management auditing firm.

The relief requested is granted in part and denied in part. The request for special NRC inspections at the facility has been granted. The requests to suspend construction activities, and direct the Licensees to initiate a management audit and an independent design and construction verification program at Comanche Peak are denied. The reasons for these decisions are explained in the "Director's Decision Under 10 CFR 2.206," DD–87–17, which is available for public inspection at the Commissions Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the local public document room for the Comanche Peak facility located at the Somervell County Public Library, On The Square, Glen Rose, Texas 76043.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 16th day of October, 1987.

James G. Keppler,

Director, Office of Special Projects.

[FR Doc. 87–25316 Filed 10–30–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–3453; ASLBP No. 87–557–05–SP; Source Material License No. SUA–917]

Atlas Minerals Division of Atlas Corp.

October 26, 1987.

Order

On October 9, 1987, there was published in the **Federal Register** a Notice of Hearing in this proceeding setting November 9, 1987, as the deadline for filing and serving petitions to intervene. See 52 FR 37855. This Notice followed the Commission's Order of September 25, 1987, commencing this proceeding and naming Atlas Corporation and NRC Staff as parties.

In view of settlement negotiations between them, on October 19 Atlas and Staff filed a joint motion to hold this proceeding in abeyance. Apparently, they contemplate filing a report by November 20 on the status of those negotiations. It is not clear from the motion whether they seek thirty days to complete their negotiations, or whether they seek an unlimited time and contemplate monthly reports to the Presiding Officer on the status of those negotiations.

In consideration of the foregoing, it is ordered:

1. This proceeding is held in abeyance pending further Order of the Presiding Officer;

2. Atlas and Staff are to report on the status of their settlement negotiations by November 20, 1987; and

3. The deadline for filing and serving petitions to intervene set in the Notice of Hearing is suspended pending further Order of the Presiding Officer.

John H. Frye, III,

Administrative Judge.

[FR Doc. 87–25314 Filed 10–30–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–324]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing; Carolina Power & Light Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–

62, issued to Carolina Power & Light Company (the licensee), for operation of the Brunswick Steam Electric Plant, Unit 2, (Brunswick Unit 2) located in Brunswick County, North Carolina.

In accordance with the application for amendment dated September 29, 1987, the amendment would revise the provisions in the Technical Specifications for Brunswick Unit 2 to change the operability and surveillance requirements for the recirculation pump trip instrumentation installed to mitigate postulated anticipated transients without scram (ATWS).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By December 2, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated Spetember 29, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Bethesda, Maryland, this 27th day of October 1987.

For the Nuclear Regulatory Commission.

Ernest D. Sylvester,

Project Manager, Project Directorate II-1, Division of Reactor Projects I/II.

[FR Doc. 87-25317 Filed 10-30-87; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Hearing and Full Commission; Public Meetings

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meetings.

SUMMARY: The Physician Payment Review Commission will hold a public hearing on Tuesday, November 10, 1987, beginning at 1:30 p.m., to hear the views of groups interested in Medicare physician payment on the issues and options to be included in the Commission's next annual report to Congress. The Commission is particularly interested in comments on development of a relative value scale and other elements of a fee schedule for Medicare and on options that reduce inappropriate utilization of physician services while not compromising quality. The hearing will be held in the Montpelier Room of the Sheraton Grand Hotel, 525 New Jersey Avenue, NW.

The full Commission meeting will be held on Thursday, November 12, 1987, from 9:00 a.m. to 5:00 p.m. and on Friday, November 13, 1987, beginning at 9:00 a.m. The meeting will be held in the Federal Ballroom of the Quality Inn, 415 New Jersey Avenue, NW. The agenda

will include discussion of the following issues: policy options to reduce utilization of inappropriate services, options for reducing inappropriate variation in charges across geographic areas, plans for the development of the Commission's relative value scale, specialty differentials, capitation, comparability of Medicare payments with those of private payers, and issues related to PPO arrangements for Medicare. The Commission was established by section 9305 of Pub. L. 99-272.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 87-25340 Filed 10-30-87; 8:45 am]

BILLING CODE 6820-SE-M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Business Meeting and Hearings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATES AND TIMES: November 9 and 10, 1987.

Business Meeting—November 9, beginning at 10:00 a.m.

Hearings—November 9, beginning at 2:00 p.m. and November 10, beginning at 9:30 a.m.

ADDRESS: Room 138 of the Dirksen Senate Office Building, Washington, DC.

FOR FURTHER INFORMATION: Contact Mr. Wiley Horsley, Commission Staff Manager, 1825 K Street NW., Suite 310, Washington, DC 20006, 202/634-4874.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to review the first draft of the report addressing housing issues, and other matters. The purpose of the hearings is to hear witness testimony relating to the divestitute of loan portfolios. The business meeting and the hearings are open to the public.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 87-25447 Filed 10-29-87; 4:40 pm]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25064; File No. SR-NASD-87-44]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. ("NASD"), Order Approving Proposed Rule Change on an Accelerated Basis Relating to Proposed Amendments to the Rules of Practice and Procedure for the NASD's Small Order Execution System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 26, 1987, the NASD filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this order to solicit comments on the proposed rule change from interested persons. For reasons described below, the Commission is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends section (a)7 of the Rules of Practice and Procedure for the Small Order Execution System ("SOES") to give the President of the NASD the authority to define the term "limited size" as it appears in the Rules of Practice and Procedure for the Small Order Execution System. Under the amendment the President will be able, from October 23, 1987 to December 31, 1987, to set the maximum size of individual orders that may be entered into or executed through SOES, at any level between 300 and 1,000 shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This rule change amends section (a)7 of the Rules of Practice and Procedure for SOES and has been approved by the Executive Committee on behalf of the Board of Governors. The rule change is consistent with section 11A(a)(1)(C) of the Act because it seeks to assure the efficient execution of small orders in an environment of extraordinarily high volume in the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 35th day after its publication in the **Federal Register** because of the extraordinary circumstances currently present in the marketplace.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(C) and 15A, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, in that accelerated approval is warranted by the extraordinary circumstances currently present in the marketplace.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW.,

Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at the above address. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 23, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-25284 Filed 10-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16085; (File No. 821-6805)]

Bank Dagang Negara; Application

Date: October 26, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bank Dagang Negara.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions.

Summary of Application: Applicant seeks an order permitting it to issue and sell its debt securities in the United States.

Filing Date: The application was filed on July 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 29, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicants, c/o John W. Erickson, Esq., White & Case, 1155 Avenue of the Americas, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3033, or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is one of five state-owned banks which dominate commercial banking in Indonesia. Applicant is extensively regulated by Indonesian and other banking authorities, which regulation includes filing detailed periodic reports with Bank Indonesia, the central bank of Indonesia, and audit review by the State Audit Office. In addition, Bank Indonesia imposes certain liquidity requirements and foreign exchange limitations. Applicant engages in a wide range of commercial, retail and other banking activities, including deposit taking, commercial lending, trade credit and foreign exchange. These activities are conducted both in Indonesia and through a number of overseas branches and agencies.

2. Applicant presently proposes to issue and sell, through its Cayman Islands branch, commercial paper denominated in United States dollars ("Notes"). The Notes will be sold in minimum denominations of $250,000, and other terms of the Notes will be such as to qualify them for the exemption from registration under the Securities Act of 1933 ("1933") afforded by section 3(a)(3) or section 4(2) of the 1933 Act, or, if backed by a letter of credit from an appropriate banking institution, section 3(a)(2) of the 1933 Act. Applicant will not issue and sell any Notes until receiving an opinion of special legal counsel in the United States to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to such exemption. Applicant does not request SEC review or approval of such counsel's opinion regarding the availability of such exemption. Applicant's obligation in respect of the Notes will rank pari passu with all unsecure and unsubordinated indebtedness (including deposit liabilities) of Applicant and superior to any subordinated indebtedness of Applicant and to claims of the holders of Applicant's capital stock.

3. Prior to issuance of the Notes or any other debt securities in the future, the Notes or such other debt securities shall have received one of the three highest investment grade ratings for at least one nationally recognized statistical rating organization and Applicant's United States counsel shall have certified that such a rating has been received; however, no such rating shall be required if, in the opinion of such counsel (having taken into account the doctrine of "integration" referred to in Rule 502 of Regulation D under the 1933 Act and various "no-action" letter made publicly available by the SEC), an exemption from registration is available pursuant to section 4(2) of the 1933 Act.

4. The Notes will be issued and sold either directly or to or through one or more commercial paper dealers in the United States which will reoffer the Notes to investors. The Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold to institutional investors and other entities and individuals who normally purchase commercial paper.

5. Applicant may, from time to time, offer its debt securities other than the Notes ("Future Securities") for sale in the United States. Any such offerings would be made only pursuant to a registration statement filed under the 1933 Act, or pursuant to an applicable exemption from such registation provided Applicant has received an opinion of United States counsel or a "no-action" letter issued by the staff of the SEC to the effect that the proposed offering is entitled to such exemption.

6. Applicant will expressly accept the jurisdiction of any State or Federal court in The City of New York, and will authorize an agent in The City of New York to accept service of process, in any action based upon the Notes or Future Securities. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due in respect of the Notes or Future Securities have been paid in full.

Applicant's Legal Conclusion

1. Applicant contends that it is impractical and unnecessary to regulate it under the 1940 Act. Specifically, Applicant believes that it is clearly primarily engaged in the commercial banking business. Applicant has never held itself out as, or considered itself to be, an investment company. Applicant is

extensively regulated by Indonesian and other banking authorities. Accordingly, Applicant submits that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

1. Applicant undertakes to ensure that there will be provided to each offeree who has indicated an interest in the Notes a memorandum ("Offering Memorandum") which: (i) Describes the business of Applicant, (ii) contains the most recent publicly available fiscal year-end audited balance sheet and income statement of Applicant, and (iii) describes the material differences between the accounting principals utilized in the preparation of Applicant's financial statements and generally accepted accounting principles as applied in the United States. Applicant additionally undertakes that the Offering Memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States and will be updated periodically to reflect material changes in the financial condition of Applicant.

2. Any offering of Future Securities will be made on the basis of appropriate disclosure documents which are at least as comprehensive as those customarily used in offerings of similar securities in the United States.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-25283 Filed 10-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16084; 812-6856]

North American Security Life Insurance Co., et al.; Application for Exemption

October 26, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: North American Security Life Insurance Company ("Security Life"), NASL Variable Life Account ("Variable Life Account"), NASL Series Fund, Inc. ("Fund"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates, Inc. ("WoodLogan").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 9(a), 13(a), 15(a), 15(b), 22(c), 26(a), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act, paragraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(iii), (b)(13)(iv), (b)(15), (c)(1)(i) and (c)(4) of Rule 6e-2 thereunder and Rule 22c-1 thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit the following transactions in connection with the issuance and sale of modified single premium variable life insurance contracts ("contracts"): (1) To permit the Variable Life Account, without the use of a custodian or trustee, to hold Fund shares in uncertificated form; (2) to deduct on surrender or lapse during the first nine contract years a surrender charge consisting of a contingent deferred sales charge and a charge for unrecovered premium taxes; (3) to deduct premium tax, cost of insurance, minimum death benefit guarantee and mortality and expense risk charges from the assets of the Variable Life Account; (4) to permit a death benefit which does not vary with the investment experience of the Variable Life Account under certain circumstances; (5) to use the 1980 CET Table for purposes of calculating sales load, including treating the difference between 1980 CSO and 1980 CET cost of insurance rates in connection with the simplified under writing procedure as a substandard insurance charge; and (6) to permit "mixed" funding of variable annuity and variable life insurance contracts.

Filing Date: The Application was filed on August 31, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 695 Atlantic Avenue, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey, (202) 272-2067 or Special Counsel Lewis B. Reich, (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations and Statements

1. Security Life is a stock life insurance company organized under the laws of Delaware in 1979. The Variable Life Account is a separate account of Security Life established in 1986 under the laws of the State of Delaware for the purpose of funding variable life insurance contracts. The Variable Life Account is registered under the 1940 Act as a unit investment trust and otherwise satisfies the conditions of paragraph (a) of Rule 6e-2 so as to be entitled to the exemptions accorded by Rule 6c-3.

2. Assets of the Variable Life Account are invested in shares of the Fund, a Maryland corporation registered under the 1940 Act as a diversified open-end management investment company. Shares of the Fund will be held under an open account arrangement without the issuance of any stock certificates. The Fund is currently used as the underlying investment medium for variable annuity contracts issued by Security Life.

3. NASL Financial, a wholly-owned subsidiary of Security Life, will be the principal underwriter of the contracts. It is a broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act") and a member of the National Association of Securities Dealers, Inc. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, has entered into an agreement with Security Life and NASL Financial to serve as the exclusive promotional agent for the contracts.

4. The contracts are modified single premium variable life insurance contracts under which the contract value will and the death benefit may vary to reflect the investment experience of the Variable Life Account. For insureds over age 15, the minimum initial premium is $10,000. For insureds age 15 or less, the minimum initial premium is $5,000. A contract owner may pay premiums in addition to the initial premium only in very limited circumstances. There is no minimum guaranteed contract value. The death benefit under the contract is the greater of (i) the initial face amount or (ii) the contract value on the date of the

insured's death multiplied by the applicable death benefit factor. The contract is designed to qualify as life insurance under section 7702 of the Internal Revenue Code.

5. There are generally no deductions made from premium payments. However, for contracts sold in jurisdictions where premium taxes exceed 3%, the excess will be deducted from premium payments. There is a surrender charge imposed on surrender of the contract during the first nine contract years. Otherwise, all charges are deducted from the assets of the Variable Life Account. Each of the charges under the contract is described in more detail below.

6. If the contract owner surrenders the contract during the first nine contract years, Security Life imposes a surrender charge which declines during that nine year period. The surrender charges a percentage of the initial net premium and consists of two components: A contingent deferred sales charge and a charge for unrecovered premium taxes. The contingent deferred sales charge is 7.2% in the first contract year, 6.9% in the second contract year, 6.6% in the third contract year and thereafter declines by 0.8% per year until it becomes 0% in the tenth contract year. The unrecovered premium tax charge is 1.8% in the first contract year and declines by 0.2% each year thereafter. The contingent deferred sales charge is designed to compensate Security Life for expenses incurred in connection with distribution of the contract. The charge for unrecovered premium taxes is designed to reimburse Security Life for the portion of the average premium tax paid by it with respect to a contract which has not been recovered through the premium tax charge described below.

7. Security Life deducts a daily charge equivalent to .45% for the first ten contract years and .30% thereafter on an annual basis of the average daily net assets of the Variable Life Account for administrative expenses, including underwriting costs, establishing and maintaining records, processing contract transactions such as loans, surrenders and transfers, calculating contract values and providing reports to contract owners. The administration charge is guaranteed never to be increased over the life of the contract, and was established in order to cover the average anticipated administrative expenses to be incurred over the period this class of contract will be in force. The charge contains no element of anticipated profit.

8. During the first ten contract years, Security Life deducts a daily charge equivalent to .20% on an annual basis of the average daily net assets of the Variable Life Account to defray premium taxes paid to state and local governments in connection with the contract. In addition, if the jurisdiction in which a contract is issued imposes a premium tax in excess of 3%, the excess will be deducted from premium payments. These charges are designed to off-set the average premium tax Security Life expects to pay with respect to a contract.

9. Security Life deducts a daily charge equivalent to .85% on an annual basis of the average daily net assets of the Variable Life Account for providing life insurance coverage for the insured. The life insurance coverage is the excess of the death benefit over the contract value. Security Life reserves the right to increase or decrease the cost of insurance charge. Security Life guarantees, however, not to increase the cost of insurance charge to an amount greater than the maximum cost of insurance charge based on the 1980 Commissioners Extended Term Mortality Table B (Unisex), age last birthday (hereinafter "1980 CET Table"). That table is used to permit the simplified underwriting procedure on contract issue.

10. Security Life deducts a daily charge equivalent to .40% on an annual basis of the average daily net assets of the Variable Life Account for assuming the risk of providing the minimum death benefit guarantee. The guarantee is that absent a contract loan, the contract will never lapse as a result of adverse investment experience and that Security Life will pay a death benefit at least equal to the initial face amount on the death of the insured.

11. Security Life deducts a daily charge equivalent to .60% on an annual basis of the daily net assets of the Variable Life Account for assuming the mortality and expense risks under the contract. The mortality risk assumed under the contract is the risk that the cost of providing the death benefit will exceed the maximum guaranteed cost of insurance charge. The expense risk assumed under the contract is the risk that the cost of providing administrative services will exceed the administration charge.

Exemptions Requested

Custodian or Trustee

12. Paragraph (b)(13)(iii) of Rule 6e–2 provides a limited exemption from the custodianship requirements under sections 26(a)(1), 26(a)(2), and 27(c)(2) of the 1940 Act if the life insurer complies, to the extent applicable, with all other provisions of Section 26 as if it were a trustee, depositor, or custodian for the separate account, and satisfies the conditions enumerated in sub-paragraphs (A), (B) and (C) of paragraph (b)(13)(iii) of Rule 6e–2. Apart from the relief requested in the Application, Security Life represents that it will comply with section 26 of the 1940 Act and subparagraphs (A), (B) and (C) of paragraph (b)(13)(iii) of Rule 6e–2, except that (1) the Variable Life Account will hold shares of the Fund under an open account arrangement without the use of stock certificates and (2) Security Life will not be acting as trustee or custodian pursuant to a trust indenture or other document. Accordingly, Security Life may not literally meet all of the requirements under sections 26(a) and 27(c)(2) of the 1940 Act including the requirements that it have "possession" of the securities and property of the Variable Life Account, that such shares be held in trust for the contract owners, and that the substantative provisions stated in section 26(a) be contained in a trust indenture. Therefore, Applicants request an exemption from sections 26(a) and 27(c)(2) of the 1940 Act and paragraph (b)(13)(iii) of Rule 6e–2 to the extent necessary to permit them to hold shares of the Fund in uncertificated form without acting as a trustee or custodian pursuant to a trust indenture of other document. In view of the conditions in subparagraphs (A) and (B) of paragraph (b)(13)(iii) of Rule 6e–2 pertaining to the financial condition of the life insurer and its supervision by state authorities, it does not appear to be necessary for the assets of the Variable Life Account to be held pursuant to a trust indenture or similar instrument. In addition, since the Variable Life Account will hold shares of the Fund under an open account arrangement and will not have physical possession of stock certificates, there is no need for a custodian with respect to Fund shares.

Surrender Charge

13. The 1940 Act and Rule 6e–2 thereunder generally contemplate front-end sales loads and premium tax charges. Consequently, Applicants request the relief more specifically described below: With respect to the sales charge component of the surrender charge Applicants request exemption from (1) the definition of "sales load" and with respect to both components of the surrender charge Applicants request relief from (2) the definition of "variable life insurance contract" and (3) the "redeemability" provisions of the 1940 Act and Rules 6e–2 and 22c–1 thereunder.

(a) Definition of Sales Load

14. Security Life will deduct a contingent deferred sales charge on surrender or lapse of a contract during the first nine contract years. In order to avoid any question concerning full compliance with the 1940 Act and rules thereunder, Applicants request exemptive relief from section 2(a)(35) and paragraphs (b)(1) and (c)(4) of Rule 6e–2 to the extent necessary for the term "sales load," as used in the 1940 Act and Rule 6e–2, to encompass the contingent deferred sales charge component of the surrender charge under the contract. Applicants assert that imposition of the sales load in the form of an "asset-based" deferred charge is more favorable to a contract owner than a charge that is deducted from the initial premium. The contingent deferred sales charge component of the surrender charge will result in greater amounts of money being available for investment on a contract owner's behalf and generally higher cash values under the contract. Since greater amounts of money will be allocated to the Variable Life Account, the death benefit under the contract may be larger than it would be if the sales load were deducted prior to allocation of monies to the Variable Life Account.

(b) Definition of Variable Life Insurance Contract

15. Rule 6e–2(c)(1)(i), as relevant, defines a "variable life insurance contract" as one which provides for a death benefit and cash surrender value which vary to reflect the investment experience of the separate account. Since the cash surrender value of the contract will be reduced during the first nine contract years to reflect the contract's surrender charge, it is possible that the contract may not meet the literal requirements of the definition of a "variable life insurance contract" in paragraph (c)(1)(i) of Rule 6e–2. To the extent necessary, Applicants hereby request exemptive relief from paragraph (c)(1)(i) of Rule 6e–2 to resolve this technical definitional question. Applicants submit that a surrender charge is more beneficial to contract owners than a front-end charge since more money is invested on their behalf than would be the case if the sales charge and premium taxes under the contract were deducted prior to allocation of the initial premium to the Variable Life Account.

(c) Redeemable Security

16. Sections 2(a)(32), 22(c), 26(a), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act and Rule 6e–2 thereunder could be read so as not to contemplate that a redeemable security would include a security that provides for imposition of a surrender charge upon redemption. Applicants submit that imposition of the surrender charge is neither inconsistent with or in violation of the provisions of the 1940 Act and Rules thereunder from which relief is sought. Further, Applicants believe that the assessment of the surrender charge upon certain redemptions is not and should not be construed as a restriction on redemption that would prevent the contract from qualification as a "redeemable security." However, in order to avoid any question as to the potential applicability of the foregoing, Applicants request exemptive relief from sections 2(a)(32), 22(c), 26(a), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act, paragraphs (b)(12), (b)(13)(iii) and (b)(13)(iv) of Rule 6e–2 and Rule 22c–1 to the extent necessary to permit Applicants to impose the surrender charge.

17. Applicants submit that imposition of the surrender charge on a contingent deferred basis is more favorable to contract owners in several respects than a charge deducted from the initial premium, the conventional method of assessing such a charge. The amount of a contract owner's investment in the Variable Life Account is greater than it would be if the charge were deducted from the initial premium. The total amount charged to any contract owner when the charge is deferred is no greater than if this charge were taken from the initial premium. In fact, the amount charged may be less for contract owners who surrender or lapse after the first contract year due to the fact that the surrender charge grades off. Additionally, the charge will not be imposed at all on contract owners who keep their contracts in force more than nine years. Finally, deferring this charge means that it is never deducted from the death benefit. Therefore, contract owners receive the primary benefit of the contract insurance protection without incurring the charge.

18. Applicants contend that the surrender charge would in no way have the dilutive effect which Rule 22c–I was designed to prohibit. When a surrender is requested, the amount paid will be based upon the net asset value of the accumulation units credited to a contract owner's account next computed after receipt by Security Life of the request for surrender. The surrender charge will be deducted from a contract owner's cash value at the time of redemption. Such a deduction in no way changes the fact that the amount redeemed and the contract owner's cash value are always derived from his or her proportionate share of the assets of the Variable Life Account. Furthermore, variable life policies, by their very nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was designed to address. Rather, the surrender charge could be seen as discouraging, rather than encouraging, such activity.

Asset Charges

19. Applicants request exemptive relief from sections 26(a) and 27(c)(2) of the 1940 Act to the extent necessary to deduct premium tax and cost of insurance charges from the assets of the Variable Life Account. The cost of insurance charge is guaranteed never to exceed a daily cost of insurance charge based upon the 1980 CET Mortality Table. The premium tax charge has been set at a level designed to reimburse Security Life for the average tax which it pays to each state when the contract is issued. If, as permitted, these charges were deducted from the initial premium, Security Life would have to make the deductions very large in as much as the contract is designed for the payment of a single premium. For the cost of insurance charge, the amount of the deduction would need to be based on assumptions about the length of time the contract would be in force, the investment performance of the various subaccounts of the Variable Life Account, how the contract owner would allocate cash value among the subaccounts and the other factors necessary to determine the net amount at risk over the life of the contract. Applicants believe that deducting premium tax and cost of insurance charges on an ongoing basis from the assets of the Variable Life Account rather than making large initial deductions from the initial premium is more equitable and beneficial to contract owners because it substantially increases the amount initially invested in the Variable Life Account on the contract owner's behalf.

20. Applicants request exemption from sections 26(a) and 27(c)(2) of the 1940 Act and paragraph (b)(13)(iii) of Rule 6e–2 to the extent necessary to impose the minimum death benefit guarantee and mortality and expense risks charges. Security Life represents that it has reviewed the level of the minimum death benefit guarantee risk charge and asserts that it is reasonable in relation to the risks assumed by Security Life under the contract. Security Life represents that it has reviewed the level of the charge for mortality and expense risks and asserts that this charge is within the range of industry practice for

comparable contracts. Security Life has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the contract will benefit the Variable Life Account and the contract owners. Security Life will keep and make available to the Commission upon request memoranda setting forth the basis for such representations and conclusion. Applicants further represent that the Variable Life Account will only invest in underlying fund(s) which have undertaken to have a board of directors, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule I2b–1 under the 1940 Act to finance distribution expenses.

Non-Variable Death Benefit

21. Paragraph (c)(1)(i) of Rule 6e–2 in pertinent part provides that a "variable life insurance contract" shall have a death benefit which varies to reflect the investment experience of a separate account. The contract provides that the death benefit will be the greater of the initial face amount or the contract value on the date of the insured's death multiplied by the applicable death benefit factor. Only when the death benefit is determined by the latter test will it vary to reflect the investment experience of the Variable Life Account. Consequently, Applicants request exemptive relief from paragraph (c)(1)(i) of Rule 6e–2 to the extent necessary to permit a death benefit that may, rather than will, vary with the investment experience of the Variable Life Account. Applicants are aware of no policy reason that should prohibit such a design.

Use of 1980 CET Table in Calculating Sales Load

22. Applicants propose to guarantee that the cost of insurance charges will not exceed charges based on the 1980 CET Table because they intend to use a simplified underwriting procedure and believe that the 1980 CET Table appropriately reflects the increased mortality risks associated with that procedure. The 1980 CET Table equals the mortality rates in the 1980 CSO Table plus the greater of (i) an increase of .75 deaths per thousand to such mortality rates or (ii) a 30% increase in such rates.

23. In view of the changes to paragraph (c)(4)(vi) incorporated in the latest version of Rule 6e–3(T), (Investment Company Act Release No. 15651 (March 30, 1987)), Applicants submit that it is appropriate to view the requested relief in two parts. Applicants request relief from paragraphs (b)(13)(i) and (c)(4)(ii) to use the 1980 CSO Table rather than the 1958 CSO Table and from (b)(13)(i) and (c)(4)(vi) to charge the premium over the 1980 CSO Table represented by the 1980 CET Table in connection with the simplified underwriting procedure.

24. Applicants believe that referencing cost of insurance charges to the 1980 CSO Table is appropriate for several reasons. First, that table reflects more accurately than the 1958 CSO Table current mortality experience. Second, many states will require use of the 1980 CSO Table starting in 1989. Third, the Commission has recognized the foregoing factors in proposing the use of the 1980 CSO Table in both the proposed amendments to Rule 6e–2 and in Rule 6e–3(T).

25. Applicants further submit that charging a premium referenced to the 1980 CSO rates in connection with a simplified underwriting procedure is consistent with the Commission,s adoption of the latest version of Rule 6e–3(T). Rule 6e–3(T)(c)(4)(vi) provides that in calculating sales load an issuer may deduct from payments "any additional charge assessed if the insured does not meet standard underwriting requirements, including, but not limited to, any additional cost of insurance charge for a contract purchased on a simplified underwriting or guaranteed issue basis." For the reasons set forth above, Applicants submit that the 1980 CET Table appropriately reflects the additional mortality risks associated with the simplified underwriting procedure. Applicants further submit that there is no reason to believe that the Commission in adopting Rule 6e–2 intended that the charge for such bona fide insurance services be treated as sales load pursuant to paragraph (c)(4) of Rule 6e–2.

Mixed Funding

26. Applicants request exemption from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and paragraph (b)(15) of Rule 6e–2 to the extent necessary to permit the sale of Fund shares to both variable annuity and variable life insurance separate accounts, subject to the provisions of clauses (i) through (iv) of Rule 6e–2(b) (15) and the undertakings set forth below. There is no policy reason why the exemptions provided by paragraph (b)(15) of Rule 6e–2 should not apply to the Fund solely because NASL Variable Account and other Security Life variable annuity separate accounts as well as the Variable Life Account and other variable life insurance separate accounts invest or may invest in the future in Fund shares. The Commission appears to have so concluded since the proposed amendments to paragraph (b)(15) of Rule 6e–2 permit, *inter alia*, funds underlying unit investment trusts to offer their shares to both variable life insurance and variable annuity separate accounts. In the release accompanying the proposed amendments, the Commission indicated that the conditions of the proposed amendment to paragraph (b)(15) sufficiently ameliorate the potential conflicts of interest so that the "mixed funding" of variable annuity and variable life insurance separate accounts should be permitted (Investment Company Act Release No. 14421 (March 15, 1985) at Section B.5). Applicants will comply with those conditions and agree that the order herein requested may be subject to those conditions as set forth below:

(1) The Board of Directors of the Fund, constituted with a majority of disinterested directors, will monitor the Fund for the existence of any material irreconcilable conflict between the interests of variable annuity contract owners investing in the Fund and interests of variable life insurance contract owners investing in the Fund.

(2) Security Life agrees that it will be responsible for reporting any potential or existing conflicts to the directors of the Fund.

(3) If a material irreconcilable conflict arises, Security Life will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the variable life insurance contracts.

27. Applicants submit that for the reasons and upon the facts set forth above, the exemptions requested in the Application are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–25282 Filed 10–30–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending October 23, 1987

The following agreements were filed with the Department of Transportation

under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45210

Parties: Members of International Air Transport Association
Dated Filed: October 19, 1987
Subject: North Atlantic-Israel Fares
Proposed Effective Date: January 1, 1988

Docket No. 45211

Parties: Members of International Air Transport Association
Date Filed: October 19, 1987
Subject: Circle Pacific Fares
Proposed Effective Date: April 1, 1988

Docket No. 45217

Parties: Members of International Air Transport Association
Date Filed: December 1, 1987
Subject: Japan-No/So/Cent America Fares
Proposed Effective Date: December 1, 1987

Docket No. 45218

Parties: Members of International Air Transport Association
Date Filed: October 20, 1987
Subject: Venezuela and TC2 Cargo Fares
Proposed Effective Date: November 1, 1987/January 1, 1988

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-25263 Filed 10-30-87; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 23, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45220

Date Filed: October 21, 1987
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 18, 1987
Description: Application of Sociedad Ecuatoriana De Transportes Aereos Saeta, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations requests authority to engage in regular foreign air transportation with respect to persons, property and mail from the Republic of Ecuador to Miami, Florida.

Docket No. 45228

Date Filed: October 22, 1987
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 19, 1987
Description: Joint Application of Continental Airlines, Inc. and Eastern Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations to renew the authority to engage in air transportation as set forth in the certificate for Route 389 for a further period of five years. (U.S.-South America)

Docket No. 45229

Date Filed: October 22, 1987
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 19, 1987
Description: Application of Continental Airlines, Inc. and Air Micronesia, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests amendment of Continental's certificate of public convenience and necessity for Route 171 and Air Micronesia's certificate of public convenience and necessity for Route 170 to authorize Continental and Air Micronesia to provide foreign air transportation of persons, property and mail between the coterminal points Honolulu and Guam, on the one hand, and the terminal point Port Moresby, Papua New Guinea, on the Other hand.

Docket No. 45236

Date Filed: October 23, 1987
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 20, 1987
Description: Application of Air Nauru, pursuant to section 402 of the Act and Subpart Q of the Regulations applies for renewal and amendment of its foreign air carrier permit and authority to provide scheduled foreign air transportation of persons, property and mail.

Docket No. 45240

Date Filed: October 23, 1987
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 20, 1987
Description: Application of Traslados, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit authorizing it to provide scheduled foreign air transportation of persons, property and mail.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-25264 Filed 10-30-87; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Commercial Space Transportation Advisory Committee; Meeting

AGENCY: Office of the Secretary of Transportation (OST); Department of Transportation (DOT).

ACTION: Commercial Space Transportation Advisory Committee; open meeting.

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 Commercial Space Transportation Advisory Committee. The meeting will take place on Thursday, November 12, 1987, from 9:00 a.m. to 5:00 p.m., and Friday, November 13, 1987, from 9:00 a.m. to 3:00 p.m., in room 8236 of the Department of Transportation's headquarters building at 400 Seventh Street, SW. in Washington, DC. This will be the sixth meeting of the Committee. The meeting will address issues associated with liability and insurance, government procurement practices, technology transfer policy, and recent consultations with the European Space Agency. The members of the Committee are:

Lionel Alford, Corporate Senior Vice President for Aerospace, The Boeing Company;
Joel Alper, President, Space Communications Division, Communications Satellite Corporation;
James W. Barrett, President, International Technology Underwriters, Inc.;
Richard E. Brackeen, President, Commercial Titan Systems, Martin Marietta Corp;
Jonathan Conrad, Executive Vice President, Sconset Group, Inc.;
Leonard Cormier, President, Third Millennium, Inc. (MMI);
William F. Ezell, Vice President, Propulsion Systems, Rocketdyne Division, Rockwell International Corporation;
Jerry Grey, Publisher, *Aerospace America,* American Institute of Aeronautics and Astronautics;
David Grimes, Chairman, Transpace Carriers, Inc.,
George A. Koopman, President and Chief Executive Officer, American Rocket Company
John Krimsky, Jr., Deputy Secretary General, United States Olympic Committee;
Adolph Medica, President, Space Transportation Systems;
Thomas Pauken, Vice President and Corporate Counsel, GARVON, Inc.;
Robert Roney, Sr. Vice President, Hughes Aircraft Company;
Daniel Ruskin, Vice President, Government Requirements, Lockheed Missiles;
Jerome Simonoff, Vice President, Citicorp Industrial Credit, Inc.;

Donald (Deke) Slayton, President, Space Services, Inc. and former astronaut.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained from DOT's Office of Commercial Space Transportation, Room 10401, 400 Seventh Street, SW., Washington, D.C. 20590. Contact: Ann M. Linnertz, telephone 202–366–5770.

Issued in Washington, DC, on October 27, 1987.

Courtney A. Stadd,

Director, Office of Commercial Space Transportation.

[FR Doc. 87–25339 Filed 10–30–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance; New Jersey Transit Rail Operations

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before December 17, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

New Jersey Transit Rail Operations

FRA Waiver Petition Docket Numbers LI–87–8 and SA–87–7

The New Jersey Transit Rail Operation (NJTRO) requests waivers of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229) and Railroad Safety Appliance Standards (49 CFR Part 231). These requests have been designated FRA Waiver Petition Docket Numbers LI–87–8 and SA–87–7, respectively. The waiver petitions pertain to three 4500 TM Trackmobile car movers that would be used at a new passenger railcar facility at Kearny, New Jersey, in lieu of standard locomotives, and would be operated in the shop and yard areas by mechanical department personnel. NJTRO seeks relief from Locomotive Safety Standards § 229.93(b) (involving fuel safety cut-off devices), § 229.121 (involving locomotive cab noise levels), and § 229.125(b) (involving headlights). The railroad also seeks relief from Safety Appliance Standards § 231.30 (regarding locomotives used in switching service).

Although the petitioner believes that the 4500 TM car movers are constructed to specifications that produce full conformity with the Code of Federal Regulations, FRA has determined that several elements incorporated in the car movers or lacking therein place the units beyond the pale. In respect to these points of contention, NJTRO has submitted this request for a permanent waiver.

Issued in Washington, DC, on October 27, 1987.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–25324 Filed 10–30–87; 8:45 am]

BILLING CODE 4910–06–M

Maritime Administration

[Docket No. S–816]

Lykes Bros. Steamship Co., Inc.; Application To Provide Privilege Service to the Marshall Islands in Conjunction With its Existing Service on Trade Route 22

Lykes Bros. Steamship Co., Inc. (Lykes) by application dated October 20, 1987, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement, Contract MA/MSB–451, to permit calls at the Marshall Islands on a privilege basis in conjunction with service on its Line D, Trade Route 22 (U.S. Gulf/Far East) service.

Lykes request is premised on the fact that there is currently no all-water U.S.-flag service offered from U.S. Gulf ports. Lykes states that its breakbulk service gives Lykes the flexibility to position ships as needed for such a service. Also, vessels operating outbound to the Far East could carry export cargo for the Marshall Islands.

In support of its request, Lykes notes that there is no subsidy impact since it would use existing vessels and it is in keeping with the purposes and policy of the Merchant Marine Act, 1936, as amended, since the privilege calls will ensure that more cargo will move on U.S.-flag vessels.

According to Lykes, the first sailing with such a privilege would be the SS MARJORIE LYKES, loading U.S. Gulf December 4, 1987.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on November 17, 1987.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Date: October 28, 1987.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 87–25286 Filed 10–30–87; 8:45 am]

BILLING CODE 4910–81–M

[Docket No. S–815]

Lykes Bros. Steamship Co., Inc.; Application To Provide Privilege Service to the U.S. Atlantic Coast in Conjunction With its Existing Service on Trade Route 22

Lykes Bros. Steamship Co., Inc. (Lykes) by application dated October 20, 1987, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement, Contract MA/MSB–451, in order to permit calls at the U.S. Atlantic coast on a privilege basis in conjunction with service on its Line D, Trade Route 22 (U.S. Gulf/Far East) service.

Lykes request is premised on the fact that there is currently no all-water U.S.-flag service offered from U.S. Atlantic

coast ports. Lykes states that its breakbulk service gives Lykes the flexibility to position ships as needed for such a service. The proposed service would permit Lykes' vessels operating homebound from the Far East to carry import cargo for the U.S. east coast to position themselves for outward cargo.

In support of its request, Lykes notes that there is no subsidy impact since it would use existing vessels and it is in keeping with the purposes and policy of the Merchant Marine Act, 1936, as amended, since the privilege calls will ensure that more cargo will move on U.S.-flag vessels. Lykes points out that there is no competitive implication involved since no other U.S. line serves the Far East from the U.S. east coast.

Lykes notes that it is also requesting the Marshall Islands as a privilege from the U.S. Gulf on Line D, Trade Route 22. If that privilege is granted, Lykes states it would request that the U.S. Atlantic coast be included.

Further, Lykes advises that the first sailing with the U.S. Atlantic privilege would be the SS Marjorie Lykes, with an ETA at Newport News, Virginia, of November 28, 1987.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on November 17, 1987.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).)

By Order of the Maritime Administrator.

Date: October 28, 1987.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 87-25287 Filed 10-30-87; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 211
Monday, November 2, 1987

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., November 6, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

CONTACT PERSONS FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–25394 Filed 10–29–87; 1:21 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., November 6, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–25395 Filed 10–29–87; 1:21 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., November 13, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–25396 Filed 10–29–87; 1:21 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., November 13, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 87–25397 Filed 10–29–87; 1:21 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., November 20, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–25398 Filed 10–29–87; 1:22 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., November 20, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–25399 Filed 10–29–87; 1:22 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., November 27, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–25400 Filed 10–29–87; 1:22 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., November 27, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–25401 Filed 10–29–87; 1:22 pm]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, November 5, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Bunk Bed Petition, CP 86–2

The staff will brief the Commission on Petition CP 86–2, which requests the Commission to issue a consumer product safety standard for bunk beds.

2. Petroleum Distillates Labeling: Final Rule

The staff will brief the Commission on a final rule to revise cautionary labeling rules for petroleum distillates.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

October 29, 1987.

[FR Doc. 87–25393 Filed 10–29–87; 1:20 pm]

BILLING CODE 6355-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, November 5, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposal to participate with the Federal Deposit Insurance Corporation in the publication of guidance for directors of financial institutions.
2. Proposed funding for portraits of former Board chairmen.

Discussion Agenda

3. Proposed amendment to Regulation Z (Truth in Lending) to implement the provisions of the Competitive Equality Banking Act of 1987 regarding adjustable rate mortgage caps. (Proposed earlier for public comment; Docket No. R-0615)
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: October 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-25369 Filed 10-29-87; 11:52 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Thursday, November 5, 1987, following a recess at the conclusion of the open meeting.

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 PERSONS 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.

Date: October 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-25370 Filed 10-29-87; 11:52 am]

BILLING CODE 6210-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 39584, October 22, 1987.

PREVIOUSLY ANNOUNCED DATE: November 3, 1987.

CHANGES IN THE MEETING: Addition of the following agenda item: Officer Compensation.

CONTACT PERSON FOR MORE INFORMATION: Mr. David F. Harris, Secretary of the Board, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 87-25427 Filed 10-29-87; 3:07 pm]

BILLING CODE 7710-12-M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00-5:00 p.m., Thursday, November 5, 1987.

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue NW., Washington, DC 20035.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the seventeenth meeting. Consideration of grant applications matters.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789-5700.

Dated: October 28, 1987.

Robert F. Turner,

President, Unites States Institute of Peace.

[FR Doc. 87-25346 Filed 10-29-87; 9:37 am]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 52, No. 211
Monday, November 2, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3235-2]

Standards of Performance for New Stationary Sources; Test Methods in Appendix A and Performance Specifications in Appendix B; Technical Correction

Correction

In rule document 87-20760 beginning on page 34639 in the issue of Monday, September 14, 1987, make the following corrections:

1. On page 34643, in the first column, in the amendatory instructions for Appendix A, Method 2, in paragraph (b), in the third line, "Cρ (side A)" should read "$\bar{C}\rho$ (side A)".

2. On page 34645, in the third column, in the amendatory instructions for Appendix A, Method 9, in paragraph (b), the symbol in the second and third lines should read "Θ".

3. On page 34650, in the second column, in the amendatory instructions for Appendix A, Method 17, in paragraph (b), in the second line, "p_w" should read "ρ_w".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-354-N]

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

Correction

In notice document 87-22853 beginning on page 37098 in the issue of Friday, October 2, 1987, make the following corrections:

1. On page 37101, in the table at the top of the page, the column headings "Labor" and "Non-Labor" should read "Urban" and "Rural".

2. On page 37105, in the third column, after the wage index entry for Mayaguez, PR, insert a reference to footnote 1.

3. On page 37106, in the first column, in the entry for Nassau-Suffolk, NY, the wage index should read "1.3399".

4. On the same page, in the third column, under Providence-Pawtucket-Woonsocket, RI, "Kent, T" should read "Kent, RI".

5. On page 37107, in the first column, in the entry for Rochester, MN, the wage index should read "1.0284".

6. On the same page, in the second column, in the entry for San Francisco, CA, the wage index should read "1.6517".

7. On page 37109, in the heading for the Appendix at the top of the page, "Cost Limits Effective October 1, 1987" should have appeared on a separate line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 2

Confidentiality of Alcohol and Drug Abuse Patient Records

Correction

In rule document 87-11785 beginning on page 21796 in the issue of Tuesday, June 9, 1987, make the following corrections:

§ 2.12 [Corrected]

1. On page 21807, in the first column, in § 2.12(b)(3)(ii), in the second line, "until" should read "unit".

§ 2.17 [Corrected]

2. On page 21809, in the first column, in § 2.17(a), in the third line, "§ 2.6" should read "§ 2.67", and in § 2.17(b), in the fifth line, "place" should read "placed".

§ 2.61 [Corrected]

3. On page 21812, in the third column, in § 2.61(b)(2), in the 14th line, "restrictions" was misspelled.

§ 2.65 [Corrected]

4. On page 21814, in the first column, in § 2.65(e)(3), in the third line, "on" should read "of".

For a Public Health Service correction to this document, see the Rules section of this issue.

BILLING CODE 1505-01-D

Federal Register

Monday
November 2, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determinations: Two Populations of the Roseate Tern, and Bonamia Grandiflora (Florida Bonamia); Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered and Threatened Status for Two Populations of the Roseate Tern

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the population of the roseate tern (*Sterna dougallii*) that nests in northeastern North America to be endangered and the Caribbean population, including birds that nest in the U.S. Virgin Islands, Puerto Rico, and Florida, to be threatened. This action is being taken because the number of suitable nesting islands for colonies of this species has been greatly reduced by human activity, competition from expanding numbers of large gulls, and predation. Critical habitat is not being designated at this time. The rule implements the protection of the Endangered Species Act of 1973 (Act), as amended, for the roseate tern.

EFFECTIVE DATE: December 2, 1987.

ADDRESSES: A complete administrative file for this rule is available for inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Paul R. Nickerson, Endangered Species Coordinator, at the above address (617/965–5100, extension 316 or FTS 829–9316).

SUPPLEMENTARY INFORMATION:

Background

The roseate tern is a dove-sized coastal bird, one of several similar-appearing species of terns found in the United States and elsewhere throughout most of the world. All of these terns are graceful, whitish seabirds with black caps and long forked tails. They are strong fliers that feed mainly on small fish, which they capture by plunging headfirst into the water. They nest on the ground, usually on small islands, in dense colonies of hundreds and sometimes thousands of birds. Often, two or more species share the same nesting areas. Although all of the associated species face similar problems, the roseate tern is particularly vulnerable because its nesting populations in North America and the Caribbean are very small and localized. Unlike certain other terns, they occur only along marine coasts. Gochfeld (1983) determined a documented world population of this wide-ranging species to be between 20,000 and 30,000 pairs, but estimated that the actual population might be closer to 44,000 pairs, with the largest numbers in the Indian Ocean.

In North America this species can be distinguished from its close relatives by its pale color, mostly black bill, and a slight rosy tint on its breast in summer. In winter, the black cap is largely replaced with a white forehead. The sexes look alike, but immature birds retain a distinctive plumage for their first year. This tern is about 38 centimeters (15 inches) long, including the long tail, and has a wing spread about twice its length. Weight averages 110 grams (3.9 ounces). They usually do not nest until they are 3 or 4 years old, although a few nest at 2 years of age.

Five subspecies are recognized worldwide, but only one, the nominate subspecies (*Sterna d. dougallii*) occurs in the Northern Hemisphere, where widely separated breeding populations occur on the northeastern coast of North America, several islands in the Caribbean Sea and in northwestern Europe (Gochfeld 1983). This subspecies also breeds at locations along the south and east coasts of Africa (Cramp 1985). Other former breeding areas, such as Bermuda, have been abandoned for many decades and recent surveys indicate that numbers nesting in the northeastern United States, adjacent Canada, the British Isles and northwest France have declined sharply (Buckley and Buckley 1984, Kirkham and Nettleship 1985, Cramp 1985).

The size and trend of the island nesting population of roseate terns in the Caribbean Sea, and occasionally the Florida Keys and Dry Tortugas, is less clear due to limited observations in many areas and some confusion between this species and the common tern (*Sterna hirundo*) in the literature. This population nests primarily in Puerto Rico and the U.S. Virgin Islands, where Van Halewyn and Norton (1984) estimate about 2,500 pairs. Sprunt (1984) estimates that 1,000 to 2,000 pairs nest in small colonies on cays and small islands in the Bahamas. In Florida, a few dozen pairs nest every year among vast numbers of other terns at the Dry Tortugas and about 40 pairs have nested on flat, gravelled rooftops in Key West in recent years (Clapp and Buckley 1984).

Roseate terns that nest in the northeastern United States appear to winter primarily in the waters off Trinidad and northern South America from the Pacific Coast of Columbia to eastern Brazil (Hamilton 1981, Nisbet 1984). Wintering grounds of the Caribbean population are still unknown, but may be the same general areas used by terns from the northeastern United States.

Although its nesting range in North America is often listed as extending from Nova Scotia to Virginia or North Carolina, and the southern tip of Florida (America Ornithologists' Union 1983), the roseate tern was always most common in the central portion of this range (Massachusetts to Long Island) and in recent years has all but disappeared from the edges of this range (Buckley and Buckley 1981, Buckley and Buckley 1984). In 1986, aside from Florida, nesting was known to have occurred only in the northeastern States of Connecticut, Maine, Massachusetts and New York (see table). In 1985, about 100–120 additional pairs nested in the province of Nova Scotia and 2 or 3 pairs on the Magdalen Islands in Quebec (Kirkham and Nettleship 1985).

The nesting population in the northeastern United States was greatly reduced by hunting for the millinery trade in the late 19th century. The population soon recovered when protection was provided and reached a high of about 8,500 pairs in the 1930's (Nisbet 1980). Subsequently, it declined to about 4,800 pairs in 1952 and may have reached a low of less than 2,500 pairs in 1977 (Erwin and Korschgen 1979). The estimated population has fluctuated in the range of 2,500 to 3,300 pairs since then (Nisbet 1980, Buckley and Buckley 1981, Kress *et al.* 1983).

Improved, more complete surveys and censuses that have been conducted in recent years have not indicated sizable changes in the total population, but a decrease in the number of nesting sites used. Improved census techniques often indicate population increases of colonial birds because the previous methods tended to underestimate. In all colonies in northeastern U.S. and Canada, this species nests among common terns (*Sterna hirundo*), which usually greatly outnumber it. An accurate census requires careful count of nests. The nests and eggs of the two species are similar, but roseates tend to conceal their nests under vegetation, boulders, driftwood, etc., making a complete nest count difficult. Also, young birds nesting for the first time tend to nest substantially later than old birds and could be missed on a single census (Spendelow 1982).

ESTIMATED PAIRS AND COLONY SITES, NE U.S., 1977, 1984-6.

State	1977	1984	1985	1986	1987
Maine:					
Pairs	80	67	26	41	61
Sites	3	8	3	3	5
Massachusetts:					
Pairs	1,327	1,820	1,618	1,746	1,697
Sites	6	8	7	4	6
Rhode Island:					
Pairs	1	2	0	0	0
Sites	1	1	0	0	0
Connecticut:					
Pairs	64	210	242	178	165
Sites	3	4	5	2	1
New York:					
Pairs	861	917	967	873	948
Sites	9	5	4	5	5
Total:					
Pairs	2,332	3,016	2,853	2,850	2,871
Sites	22	24	19	14	17

At least 29 major sites formerly used by roseate terns have been abandoned since 1920. Some of these colonies moved because of repeated predation, primarily by nocturnal-feeding mammals, but nearly half of the sites were abandoned because of competition for nesting space from expanding populations of gulls (Nisbet 1980).

On December 30, 1982, the Service published a notice of review in the **Federal Register** (47 FR 58454) indentifying vertebrate taxa, native to the U.S., being considered for addition to the List of Endangered and Threatened Wildlife pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The notice included the roseate tern as a category 2 species (i.e., a species still needing some data before a determination on whether to propose or not could be made). Since then, the Service reviewed further data on the nesting status and biology of the tern on the northeastern coast of the U.S. and on some islands in the Caribbean Sea.

On September 18, 1985, the Service issued a revised notice of vertebrate animal taxa under consideration (50 FR 37958). That notice considered the roseate tern a category 1 species, indicating substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened.

On November 4, 1986, the Service published a proposed rule in the **Federal Register** (51 FR 40047) advising that sufficient information was on file to support a determination that the roseate tern is an endangered and threatened species pursuant to the Act. The proposal solicited comments on the proposed listing from any interested parties, especially concerning threats to this species, its distribution and range, whether or not critical habitat should be designated, and activities that might impact the species.

Summary of Comments and Recommendations

In the November 4, 1986, proposed rule, all interested parties were requested to submit factual information that might contribute to the development of a final rule. Appropriate State resource agencies in the tern's range, county governments, Federal agencies, foreign countries, scientific organizations, and other interested parties were contacted and requested to comment. Notices inviting public comment were published in several newspapers. Comments were received by mail from 20 parties during the public comment period. These included three Federal agencies and six State or territorial departments. Most of the commenters (16) supported the proposed listing, and none opposed listing. A few suggested technical corrections or provided additional information for the proposal. Others recommended recovery measures. Those comments that did not specifically address the issued of listing are not responded to here.

Seven commenters recommended the designation of certain areas as critical habitat. Most of them specified only nesting sites, but two thought that major feeding areas also should be designated. The Service finds that designation of critical habitat at this time would not be prudent for reasons that are discussed in more detail below. However, it should be noted that designation of critical habitat is intended to make agencies of the Federal government aware of areas in which they may be subject to their obligation to not further endanger listed species. It does not actually increase protection from adverse actions of private individuals.

Four commenters noted that mortality on the wintering grounds, possibly due to human predation, may be major cause of low population levels but that no plan is proposed for international cooperation to alleviate or reduce the threat. Although the Service has limited opportunity for a direct management role in foreign countries, there are some opportunities for international educational and research activities under the Endangered Species Act. The Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere is another such vehicle for encouraging conservation in Latin America. Steps will be taken to make the maximum use of these opportunities.

Two commenters questioned the separate designations of threatened and endangered for the two populations. One thought that both populations should be listed as threatened; the other recommended endangered status for all North American roseate terns. The second commenter thought that the small number of birds nesting in Florida in particular should be listed as endangered. The Service agrees that this tern, which usually nests in dense colonies, but at only a few locations, is at risk wherever it breeds and perhaps even more so on wintering grounds that may be shared by both populations. On the basis of all available information, the Service concluded that the few nesting sites and relatively small nesting population in the northeast warranted designation of that population as endangered. Although less is known about the breeding population in the West Indies, indications of more birds nesting at more sites led to the conclusion that only threatened status was warranted at this time.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, including the comments received, the Service has determined that the population of the roseate tern that nests in northeastern North America should be classified as endangered and the Caribbean population as threatened. Procedures found at section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to roseate terns in the Western Hemisphere are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Almost all important colonies of roseate terns are and have been on small islands, often located at ends or breaks in barrier islands. Nesting habitat for the northeastern North America population has been greatly reduced by housing developments and other human activity on and near the coastal barrier islands. Some roseate terns have attempted to nest with common terns in the salt marshes but with almost no success (Buckley and Buckley 1981).

In southern New England, many traditional nesting sites were abandoned during the 1940's and 1950's when herring *(Larus argentatus)* and great black-backed *(Larus marinus)* gulls rapidly expanded their nesting ranges southward into that region. These large and aggressive gulls not

only preyed on young terns, but gradually took over most of the outer islands that were preferred by nesting terns. The gulls select nesting sites and initiate nesting in early spring, before the terns return from wintering areas. After a few years, when the nesting gulls reach a certain density, the terns are forced to seek other sites. In several instances islands close to shore, or even peninsulas, have been used, but various predators or human disturbance caused the terns to abandon those sites within a few years.

Many of the islands used by nesting terns in recent years were long-time sites of lighthouses with occupied residences. The presence of humans usually discouraged nesting by gulls, but not terns. However, as the lights have become automated and human occupation has been terminated, the gulls have gradually taken over the islands. At one such site in Massachusetts nesting gulls had displaced all terns by 1966. A gull removal program was implemented and the island now supports nearly 60% of all nesting roseate terns in North America as well as large numbers of common terns. Other islands with formerly manned lighthouses or forts now support large tern colonies, but only because nesting gulls have been kept out. In the Caribbean area, almost all of the recorded breeding sites of roseate terns have been on very small islets, usually located off small or medium-sized islands. Although these islets are too small for development and lack competing gulls they are regularly visited by "eggers" who collect large quantities of eggs for food (Van Halewyn and Norton 1984).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The roseate tern, as most other terns and many other colonial nesting waterbirds, suffered a drastic population decline in the United States in the late 19th century due to hunting for the millinery trade. However, under protective laws such as the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–711) and changing fashions in the early 20th century, the species staged a rapid comeback. Most existing colonies are on publicly-owned lands and receive some protection.

Some of the larger colonies are the subject of intensive, long-term research that involves nest-trapping, banding, measurements of eggs and young and other activities that can be disruptive. However, high productivity in those colonies suggests that regular presence by humans conducting studies may actually be beneficial by deterring predation from mammals and birds as well as possible human vandalism. The research activity also habituates the birds to human presence, resulting in less harm from casual human visitation (Nisbet 1981b).

A major cause of the declining population since the 1950's may be the trapping and netting of wintering terns for human consumption along the northeastern coast of South America (Nisbet 1984). In the U.S. Virgin Islands, and elsewhere in the Caribbean, the harvest of eggs for food is a common, although generally illegal, practice.

C. *Disease or predation.* Disease has not been identified as a significant problem in this species in North America, but terns of other species have succumbed to avian cholera, botulism and paralytic shellfish poisoning. An arbovirus was collected from dead roseate terns at a nesting colony in the Seychelles, and probably was transmitted by ticks (Converse *et al.* 1976).

Adult terns are relatively long-lived birds and not highly vulnerable to predators other than humans. On the other hand, eggs and young are vulnerable and predation may completely wipe out production in a given colony (Nisbet 1981a).

In daylight hours roseate terns (and the more aggressive common terns among which they usually nest), are fairly successful in deterring potential nest predators by harrassment. Nocturnal predators are more of a problem because they may panic the terns and cause the entire colony to abandon eggs and young and not return until dawn. Although the predator may destroy only a few nests, other eggs and young are exposed to chilling, resulting in delayed hatching of eggs and, under extreme weather conditions, major losses of eggs and young. In some locations, delay at the hatching stage may increase losses of young to ants which enter the hatching egg and kill the chick (Nisbet 1981a).

The main reason most terns use remote, small islands for nesting is the absence of predatory mammals such as foxes, skunks and the exotic brown rats. If mammalian predators do gain access, the terns usually abandon the site, but sometimes only after consecutive years of reproductive failure. Predatory birds, particularly nocturnal feeders such as great-horned owls *(Bubo virginianus)* and black-crowned night-herons *(Nycticorax nycticorax)*, pose a greater problem because they can fly to the small islands. Sometimes individuals of these species specialize in preying on terns and return to a colony night after night. The owls prey on adult terns or nearly-grown young; the night-herons on eggs and recently hatched young. When terns nested on remote outer islands, they had less contact with these predators. However, as gulls took over the preferred nesting islands, the terns were restricted to islands closer to the mainland.

In the Caribbean area, populations may be declining as a result of disturbance and predation by man and introduced mammals, including the brown rat and mongoose (Van Halewyn and Norton 1984; Sprunt 1984).

D. *The inadequacy of existing regulatory mechanisms.* The Migratory Bird Treaty Act protects the roseate tern and its parts, nest, and eggs from taking and trade while it is under United States jurisdiction, but not when in most of its Caribbean or South American wintering grounds. The roseate tern is a State-listed species in Florida, New Hampshire, and Massachusetts (threatened) and in Maine, New York and Connecticut (endangered), but these listings provide little if any additional protection. Although its current major nesting islands in the Northeast are largely protected, pressure from human encroachment and nesting gulls limits any opportunity for expansion or shift to new sites. Most of the current nesting sites are on lands administered by the Service (National Wildlife Refuges), National Park Service, or State or local governments, but the protection of most colonies is by volunteer private interests that are largely self-funded and without long-term institutional commitment. The Endangered Species Act offers additional possibilities for increased protection and management of nesting habitat for the bird.

E. *Other natural or manmade factors affecting its continued existence.* As previously noted, the displacement of roseate terns from their traditional colonies by gulls has been the major factor in reducing the number of nesting colonies in northeastern North America, if not in reducing the population as well. The increase of gulls is primarily attributed to an increased food base provided by human waste, particularly garbage at landfills. Survival of young gulls in the critical first winter is greatly enhanced by the abundant food source. In order to make more nesting habitat available for the terns, it may be necessary to reduce or eliminate gull populations at some locations.

The roseate tern is a specialist feeder on small schooling marine fish, which the tern captures by plunging into the water. In southern New England (and probably in New York), American sand

lance (*Ammodytes americanus*) have comprised 80–100% of the fish eaten by adults or fed to young (Nisbet 1981a). This fish has become extremely plentiful in recent years, which may help account for the relatively high reproductive success among these terns. In other places the terns feed on other small schooling fish. They may fly as far as 10 kilometers (6 miles) from nesting areas to feeding areas (Nisbet 1981a) but utilize nearby tide-rips or inlets if fish are present. If conditions that now sustain the high number of sand lances in the major tern-nesting areas change and fish populations dwindle, the roseate terns may raise fewer young and suffer accelerated population decline.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the population of roseate terns that nests in northeastern North America as endangered. This small, reduced population that nests within a constricted range, at only a few sites, and with nearly 60% of the population confined to one small island off southeastern Massachusetts, warrants endangered status. If gulls are allowed to take over the few remaining major nesting islands, this tern will be in danger of becoming extirpated from this region of North America. The preferred action for the population of roseate terns that nests in the Caribbean, including the U.S. Virgin Islands, Puerto Rico (Culebra), and Florida (Dry Tortugas and Florida Keys), is to list as threatened. This is based on available information that indicates the population is larger and nests in many small colonies at widely scattered sites.

Critical Habitat

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Although the Service received several comments advocating the designation of critical habitat, it has concluded that there is no demonstrable overall benefit to the roseate tern in designating critical habitat and that such an action is not prudent at this time. This determination has been made for the following reasons:

1. Most nesting colonies of the roseate tern in the U.S. are on lands that are owned and protected by Federal, State or local government agencies who have already been notified of the terns' locations.

2. Localities of some colonies and their feeding areas change over time, so rigidly defining critical habitat boundaries around presently utilized nesting and feeding areas would serve no long-term purpose.

3. Post-breeding dispersal of adult and young birds takes them to coastal locations that may be widely separated from the nesting areas and are difficult to delineate. They subsequently leave the coast and become more pelagic.

Available Conservation Measures

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

The Migratory Bird Treaty Act makes it illegal to take, possess, sell, deliver, carry, transport or ship roseate terns or their parts, nests, eggs or young, but provides no protection for their habitat. Section 7(a) of the Endangered Species Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. There are no known Federal projects or activities that would require consultation and possible modification because of any likely effect upon this species. However, as previously noted, this tern formerly was more widely distributed but has suffered from habitat losses and disturbances throughout much of that range.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general trade prohibitions and exceptions that apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes (including banding and marking), to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Because the roseate tern already is protected from trade under the Migratory Bird Treaty Act, hardship permits are not expected.

National Environmental Policy Act

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

Literature Cited

American Ornithologists' Union. 1983. Checklist of North American Birds, Sixth Edition. Washington, DC.

Buckley, P.A., and F.G. Buckley. 1981. The Endangered Status of North American Roseate Terns. Colonial Waterbirds 4:166–173.

Buckley, P.A., and F.G. Buckley. 1984. Seabirds of the North and Middle Atlantic Coast of the United States. Pp. 101–117, *In:* J.P. Croxall, P.G.H. Evans, and R.W. Schreiber, Eds. Status and Conservation of

the World's Seabirds. International Council for Bird Preservation. Tech. Publ. No. 2. 778 pp.

Clapp, R.B., and P.A. Buckley. 1984. Status and Conservation of Seabirds in the Southeastern United States. Pp. 135–155. *In:* J.P. Croxall, P.G.H. Evans, and R.W. Schreiber, Eds. Status and Conservation of the World's Seabirds. International Council for Bird Preservation. Tech. Publ. No. 2. 778 pp.

Converse, J.D., H. Hoogstraal, M.J. Moussa, M.N. Kaiser, J. Casals, and C.J. Feare. 1976. Aride Virus, A New Ungrouped Arbovirus Infecting *Amblyomma loculosun* Ticks from Roseate Terns in the Seychelles. Arch. Virol. 50:237–240.

Cramp, S. (Ed.) 1985. The Birds of the Western Palearctic, Vol. IV. London, Oxford Univ. Press.

Erwin, R.M., and C.E. Korschgen. 1979. Coastal Waterbird Colonies: Maine to Virginia, 1977. U.S. Fish and Wildlife Service. FWS/OBS 79/08.

Gochfeld, M. 1983. The Roseate Tern: World Distribution and Status of A Threatened Species. Biol. Conserv. 25:103–125.

Hamilton, J. 1981. Recoveries of Wintering Roseate Terns. J. Field Ornithology 52:36–42.

Kirkham, I., and D. Nettleship. 1985. Status of the Roseate Tern *Sterna dougallii* (Montagu) in Canada. Report prepared for the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). 34 pp.

Kress, S.W., E.H. Weinstein, and J.C.T. Nisbet. 1983. The Status of Tern Populations in Northeastern United States and Adjacent Canada. Colonial Waterbirds 6:84–106.

Nisbet, I.C.T. 1980. Status and Trends of the Roseate Tern *Sterna dougallii*. Unpublished report, U.S. Fish and Wildlife Service, Office of Endangered Species, Newton Corner, Massachusetts.

Nisbet, I.C.T. 1981a. Biological Characteristics of the Roseate Tern *Sterna dougallii*. Unpublished report, U.S. Fish and Wildlife Service, Office of Endangered Species, Newton Corner, Massachusetts.

Nisbet, I.C.T. 1981b. Behavior of Common and Roseate Terns After Trapping. Colonial Waterbirds 4:44–46.

Nisbet, I.C.T. 1984. Migration and Winter Quarters of North American Roseate Terns as Shown by Banding Recoveries. J. Field Ornithology 55(1):1–17.

Spendelow, J.A. 1982. An Analysis of Temporal Variation in, and Effects of Habitat Modification on, the Reproductive Success of Roseate Terns. Colonial Waterbirds 5:19–31.

Sprunt, A., IV. 1984. The Status and Conservation of Seabirds of the Bahama Islands. Pp. 157–168. *In:* J.P. Croxall, P.G.H. Evans, and R.W. Schreiber, Eds. Status and Conservation of the World's Seabirds. International Council for Bird Preservation. Tech. Publ. No. 2. 778 pp.

Van Halewyn, R., and R.L. Norton. 1984. The Status and Conservation of Seabirds in the Caribbean. Pp. 169–185. *In:* J.P. Croxall, P.G.H. Evans, and R.W. Schreiber, Eds. Status and Conservation of the World's Seabirds. International Council for Bird Preservation. Tech. Publ. No. 2. 778 pp.

Author

The primary author of this final rule is Ralph Andrews, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 or FTS 829–9316/829–9379).

List of Subjects in 50 CFR Part 17

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

Final Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Tern, roseate	*Sterna dougallii dougallii*	Tropical and temperate coasts of Atlantic Basin and East Africa.	U.S.A. (Atlantic Coast south to NC), Canada (NF,NS,QU), Bermuda.	E	296	NA	NA
Do	do	do	Western Hemisphere and adjacent oceans, incl. U.S.A. (FL,PR,VI), where not listed as endangered.	T	296	NA	NA

Dated: October 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–25332 Filed 10–30–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Bonamia grandiflora (Florida Bonamia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Bonamia grandiflora*, a plant in the family Convolvulaceae (morning glories), to be a threatened species pursuant to the Endangered Species Act of 1973 (Act), as amended. Critical habitat is not determined. This plant is endemic to sand pine scrub vegetation in the Florida peninsula, with a historic distribution from Volusia and Marion Counties south to Sarasota and Highlands Counties. The known populations of this plant are on private land and in the Ocala National Forest. *Bonamia grandiflora* is threatened by residential and commercial development of its habitat and by successional changes. This rule will implement the Federal protection and recovery provisions afforded by the Act for *Bonamia grandiflora*.

DATE: The effective date of this rule is December 2, 1987.

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

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

SUPPLEMENTARY INFORMATION:

Background

Bonamia grandiflora was first collected in Florida by Ferdinand Rugel between 1842 and 1849. Specimens collected by A. P. Garber from Manatee and Sarasota Counties, Florida in 1878 were assigned by Asa Gray (1880) to a new species, *Breweria grandiflora*. The genus *Breweria* has since been merged into *Bonamia*. Hans Hallier transferred the plant to the genus *Bonamia* in 1897 (Myint and Ward 1968; D. Austin, Florida Atlantic Univ., pers. comm., 1986), but Small (1933) attributed the transfer to A. Heller, apparently in error. The plant is endemic to peninsular Florida. It is a perennial vine with sturdy prostrate stems about a meter (3 feet) long. The leathery oval or ovate leaves, up to about 4 centimeters (1.6 inches) long, are either upright or spreading. The flowers are solitary in the leaf axils. The funnel-shaped corolla is 7–10 centimeters (2.7–3.9 inches) long and 7–8 centimeters (2.7–3.1 inches) across, and pale but vivid blue with a paler center, similar to the cultivated "Heavenly Blue" morning glory. The fruit is a capsule. This plant is the only morning glory vine of the scrub with large blue flowers (Wunderlin *et al.* 1980) and can be readily identified even when not in flower. *Bonamia grandiflora* is restricted to sand pine scrub vegetation consisting of evergreen scrub oaks and sand pine (*Pinus clausa*), with openings between the trees and shrubs occupied by lichens and herbs. The sandy openings are created by infrequent, severe fires or by mechanical disturbance. The openings eventually disappear as oaks regrow from their roots and as sand pines grow from seed. In Highlands and Polk Counties, *Bonamia grandiflora* occupies sandy openings along with other scrub endemic plants, including three that are federally listed: Highlands scrub hypericum (*Hypericum cumulicola*), papery whitlow-wort (*Paronychia chartacea*), and scrub plum (*Prunus geniculata*). In Orange County, *Bonamia grandiflora* occurs with scrub lupine (*Lupinus aridorum*), which is federally listed as endangered. The historic range of *Bonamia grandiflora* was from central Highlands County northward through Polk, northwestern Osceola, western Orange, Lake, eastern Marion and northwestern Volusia Counties on ridges and uplands of the central peninsula. An isolated site was found by Johnson (1981) in Hardee County, and collections were made in Manatee and Sarasota Counties in 1878 and 1916 (Wunderlin *et al.* 1980). The plant has been extirpated from much of its former range by urban and agricultural development, especially citrus groves. In the Ocala National Forest, *Bonamia grandiflora* is restricted to bare, sunny sand at the margins of sand pine stands on road rights of way, fire lanes, and other places that are kept clear of trees and shrubs.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In this report, *Bonamia grandiflora* was listed as threatened. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) that accepted the report as a petition in the context of former section 4(c)(2) of the Act (petition acceptance is now covered by section 4(b)(3)(A) of the Act, as amended). On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Bonamia grandiflora* as a category-2 candidate (a species for which data in the Service's possession indicate listing is possibly appropriate, but for which additional biological information is needed to support a proposed rule). A supplement to the 1980 notice of review, published on November 28, 1983 (48 FR 53640), treated *Bonamia grandiflora* as a category-1 candidate (a species for which data in the Service's possession indicate listing is warranted), based on a status report by Wunderlin *et al.* (1980). An updated notice of review published on September 27, 1985 (50 FR 39525), maintained the plant as a category-1 candidate. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Bonamia grandiflora* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, October 11, 1985, and October 10, 1986, the Service found that the petitioned listing of this species was warranted, and that, although pending proposals had precluded its proposal, expeditious progress was being made to list this species. The proposed rule to list *Bonamia grandiflora* as a threatened species was published in the **Federal Register** (51 FR 40044) on November 4, 1986.

Summary of Comments and Recommendations

In the November 4, 1986, proposed rule (51 FR 40044) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Ocala Star Banner* (November 26, 1986), the *Orlando Sentinel* (November 23, 1986), the *Polk County Democrat* (November 24, 1986), the *Sebring News-Sun* (November 23, 1986), and the *Wauchula Herald-Advocate* (November 27, 1986). Seven written comments were received on the proposal and are discussed below. The Office of the Governor noted that "the proposed action is in accord with State plans, programs, procedures, and objectives." The Florida Department of Agriculture and Consumer Services and the Florida Game and Fresh Water Fish Commission supported the listing proposal as published. The Florida Department of Environmental Regulation determined the listing to be consistent with the Florida Coastal Management Program and, in a separate comment, had no objection to the listing. The Florida Department of State, Division of Historical Resources, determined that the proposal had no effect on historic sites. A Florida botanist noted that the Service "had already consulted the best experts."

Summary of Factors Affecting the Species

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

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Bonamia grandiflora* is currently known from a number of sites in Ocala National Forest in Marion County and from 18 sites south of the Forest: Hardee County, one site; Highlands County, 2 sites; Polk County, 10 sites; and Orange County, 5 sites. Habitat destruction is the principal threat. In Highlands County, 64.2 percent of the xeric vegetation (scrub, scrubby flatwoods, and southern ridge sandhills) present before settlement was destroyed by 1981, and an additional 10.3 percent of the xeric vegetation was moderately disturbed, primarily by construction of roads for housing subdivisions (Peroni and Abrahamson 1985). Remaining tracts of scrub are rapidly being developed for citrus groves and housing (Fred Lohrer, Archbold Biological Station, pers. comm. 1985). Habitat destruction is similar in Polk County, the leading county in the state for citrus production (Fernald 1981). A careful survey of scrub vegetation by the Florida Natural Areas Inventory found *Bonamia grandiflora* at only 12 sites in these two counties. Farther north, most of the former habitat of the plant in northwest Osceola, western Orange, and central Lake Counties has been converted to agricultural or urban uses. The five known sites for the plant in Orange County are all on small remnants of scrub vegetation or vacant lots surrounded by houses or orange groves west and southwest of Orlando, one of the fastest growing urban areas in the United States. Current management of the Ocala National Forest seems compatible with the protection of *Bonamia*. The 1985 Land and Resource Management Plan for the National Forests in Florida appears to be beneficial for *Bonamia grandiflora*. Practices that limit off-road vehicles and that maintain the early successional habitat of this plant (see Factor E) will contribute to this species' continued existence in the Forest.

Bonamia grandiflora is protected on The Nature Conservancy's Tiger Creek Preserve in Polk County, but land acquisition has not yet been completed. Land acquisition by The Nature Conservancy or the Florida State government in the Saddle Blanket Lakes area of Polk County may preserve more habitat for this species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Bonamia grandiflora* is conspicuous and distinctive when in flower, and tends to grow in accessible areas, and so it is vulnerable to excessive scientific collecting and to vandalism. Because of its flowers, the plant may be of interest as an ornamental.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms. Bonamia grandiflora* is listed as endangered under the Preservation of Native Flora of Florida Act (Section 581.185–187, Florida Statutes), which regulates the harvest, destruction, transport, and sale of plants but does not provide habitat protection. The populations in Ocala National Forest are included on the "Regional Forester's Proposed Sensitive List;" species on this list are provided protection and management as outlined in 36 CFR Part 261. Listing under the Act will augment the Forest Service protective measures by providing for a recovery plan and other conservation measures throughout its range.

E. *Other natural or manmade factors affecting its continued existence.* In Hardee, Highlands, Polk, and Orange Counties, *Bonamia grandiflora* is restricted to remnant tracts of scrub. These tracts are surrounded by residential and agricultural areas and are vulnerable to trash dumping, invasion by exotic plants and weeds, and damage from off-road vehicles. *Bonamia* depends on occasional fires (see "Background" section) or equivalent mechanical land disturbance to renew the sunny openings that it inhabits. The Tiger Creek Preserve will probably develop a prescribed burning program. *Bonamia grandiflora* does not occur within the dense managed sand pine forests of Ocala National Forest. The plant inhabits the edges of such forests, road rights-of-way, and fire lanes. The sites are created and maintained by human activity, therefore the plant is vulnerable to changes in the management of such areas which would allow succession to progress. The plant's spotty distribution and small geographic range make it especially susceptible to any adverse management practices.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Bonamia grandiflora* in determining to make this rule final. Based on this evaluation, the preferred action is to list *Bonamia grandiflora* as threatened. The plant has already been extirpated from part of its historic range (Volusia County, Lake County outside the Ocala National Forest, most of western Orange County, and Manatee and Sarasota Counties). In the Ocala National Forest, in Lake and Marion Counties, existing forest management practices and the new Land and Resource Management Plan satisfactorily accommodate the habitat requirements of *Bonamia grandiflora*. However, in the National Forest the plant is effectively confined to manmade open areas, where it is vulnerable to a variety of human activities. Critical habitat is not being determined for *Bonamia grandiflora* for the reasons described in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Bonamia grandiflora* at this time. Publication of critical habitat descriptions and maps would increase the degree of threat from taking or other human activity. *Bonamia grandiflora* has a large blue "morning glory" type flower and may be of potential horticultural interest. Forest Service personnel at the forest Supervisor's Office and the Regional Office were contacted during the preparation of the proposal and informed of the precise locations of this plant. Designation of critical habitat on Forest Service land might increase the vulnerability of *Bonamia grandiflora* to vandalism, collecting, and unintentional trampling by visitors. While collecting is regulated on National Forests, such regulations are difficult to enforce. Therefore, the Service finds that designation of critical habitat for *Bonamia grandiflora* is not prudent at the present time, since such designation can be expected to increase the degree of threat from taking or other human activity.

Available Conservation Measures

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

prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All presently known sites for *Bonamia grandiflora* are on private land, except for those in the Ocala National Forest. The Forest Service's present management and its new Land and Resource Management Plan appear to benefit this species; consultation is not foreseen unless a decline in *Bonamia grandiflora* is observed in the National Forest or unless the Plan is significantly revised.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export a threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

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

References Cited

Austin, D.F. 1979. Florida bonamia. Page 71 in D.B. Ward, Ed. Rare and endangered biota of Florida. Vol. 5. Plants. University Presses of Florida, Gainesville.

Fernald, E.A. 1981. Atlas of Florida. Florida State Univ. Foundation, Tallahassee. xi + 276 pp.

Gray, A. 1880. Botanical contribution. Proc. Amer. Acad. Arts 15:25–52.

Johnson, A.F. 1981. Scrub endemics of the central ridge, Florida. Unpublished report prepared for U.S. Fish and Wildlife Service.

Myint, T., and D.B. Ward. 1968. A taxonomic revision of the genus *Bonamia* (Convolvulaceae), Phytologia 17:121–239.

Peroni, P.A., and W.G. Abrahamson. 1985. A rapid method for determining losses of native vegetation. Natural Areas Journal 5:20–24.

Small, J.K. 1933. Manual of the southeastern flora. Univ. of North Carolina Press, Chapel Hill.

Stout, I.J. 1982. Descriptions of 84 stands of Florida sand pine scrub vegetation. Unpublished data prepared for U.S. Fish and Wildlife Service.

Wunderlin, R. 1984. Status report on *Lupinus aridorum*. Unpublished report prepared for U.S. Fish and Wildlife Service.

Wunderlin, R., D. Richardson, and B. Hansen. 1980. Status report on *Bonamia grandiflora*. Unpublished report prepared for U.S. Fish and Wildlife Service.

Author

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

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
Convolvulaceae—Morning glory family:						
Bonamia grandiflora	Florida bonamia	U.S.A. (FL)	T	297	NA	NA
*	*	*	*	*		

Dated: October 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–25333 Filed 10–30–87; 8:45 am]

BILLING CODE 4310–55–M

Reader Aids

Federal Register

Vol. 52, No. 211

Monday, November 2, 1987

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

41943-42072.....2

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Last List October 30, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register,** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2741/Pub. L. 100-141

1988 Olympic Commemorative Coin Act. (Oct. 28, 1987; 101 Stat. 832; 3 pages) Price: $1.00

H.J. Res. 234/Pub. L. 100-142

To designate the month of November in 1987 as "National Hospice Month." (Oct. 28, 1987; 101 Stat. 835; 1 page) Price: $1.00

S.J. Res. 163/Pub. L. 100-143

To designate the month of November 1987, as "National Family Bread Baking Month." (Oct. 28, 1987; 101 Stat. 836; 1 page) Price: $1.00

S.J. Res. 168/Pub. L. 100-144

Designating the week beginning October 25, 1987, as "National Adult Immunization Awareness Week." (Oct. 28, 1987; 101 Stat. 837; 2 pages) Price: $1.00

S.J. Res. 198/Pub. L. 100-145

To designate the week beginning on November 2, 1987, and ending on November 8, 1987, as "National Tourette Syndrome Awareness Week." (Oct. 28, 1987; 101 Stat. 839; 1 page) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1987
4	14.00	Jan. 1, 1987
5 Parts:		
1-1199	25.00	Jan. 1, 1987
1200-End, 6 (6 Reserved)	9.50	Jan. 1, 1987
7 Parts:		
0-45	25.00	Jan. 1, 1987
46-51	16.00	Jan. 1, 1987
52	23.00	Jan. 1, 1987
53-209	18.00	Jan. 1, 1987
210-299	22.00	Jan. 1, 1987
300-399	10.00	Jan. 1, 1987
400-699	15.00	Jan. 1, 1987
700-899	22.00	Jan. 1, 1987
900-999	26.00	Jan. 1, 1987
1000-1059	15.00	Jan. 1, 1987
1060-1119	13.00	Jan. 1, 1987
1120-1199	11.00	Jan. 1, 1987
1200-1499	18.00	Jan. 1, 1987
1500-1899	9.50	Jan. 1, 1987
1900-1944	25.00	Jan. 1, 1987
1945-End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
1-199	18.00	Jan. 1, 1987
200-End	16.00	Jan. 1, 1987
10 Parts:		
0-199	29.00	Jan. 1, 1987
200-399	13.00	Jan. 1, 1987
400-499	14.00	Jan. 1, 1987
500-End	24.00	Jan. 1, 1987
***11**	11.00	July 1, 1987
12 Parts:		
1-199	11.00	Jan. 1, 1987
200-299	27.00	Jan. 1, 1987
300-499	13.00	Jan. 1, 1987
500-End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1-59	21.00	Jan. 1, 1987
60-139	19.00	Jan. 1, 1987
140-199	9.50	Jan. 1, 1987
200-1199	19.00	Jan. 1, 1987
1200-End	11.00	Jan. 1, 1987
15 Parts:		
0-299	10.00	Jan. 1, 1987
300-399	20.00	Jan. 1, 1987
400-End	14.00	Jan. 1, 1987
16 Parts:		
0-149	12.00	Jan. 1, 1987
150-999	13.00	Jan. 1, 1987
1000-End	19.00	Jan. 1, 1987
17 Parts:		
1-199	14.00	Apr. 1, 1987
200-239	14.00	Apr. 1, 1987
240-End	19.00	Apr. 1, 1987
18 Parts:		
1-149	15.00	Apr. 1, 1987
150-279	14.00	Apr. 1, 1987
280-399	13.00	Apr. 1, 1987
400-End	8.50	Apr. 1, 1987
19 Parts:		
1-199	27.00	Apr. 1, 1987
200-End	5.50	Apr. 1, 1987
20 Parts:		
1-399	12.00	Apr. 1, 1987
400-499	23.00	Apr. 1, 1987
500-End	24.00	Apr. 1, 1987
21 Parts:		
1-99	12.00	Apr. 1, 1987
100-169	14.00	Apr. 1, 1987
170-199	16.00	Apr. 1, 1987
200-299	5.50	Apr. 1, 1987
300-499	26.00	Apr. 1, 1987
500-599	21.00	Apr. 1, 1987
600-799	7.00	Apr. 1, 1987
800-1299	13.00	Apr. 1, 1987
1300-End	6.00	Apr. 1, 1987
22 Parts:		
1-299	19.00	Apr. 1, 1987
300-End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0-199	14.00	Apr. 1, 1987
200-499	26.00	Apr. 1, 1987
500-699	9.00	Apr. 1, 1987
700-1699	18.00	Apr. 1, 1987
1700-End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
26 Parts:		
§§ 1.0-1.60	12.00	Apr. 1, 1987
§§ 1.61-1.169	22.00	Apr. 1, 1987
§§ 1.170-1.300	17.00	Apr. 1, 1987
§§ 1.301-1.400	14.00	Apr. 1, 1987
§§ 1.401-1.500	21.00	Apr. 1, 1987
§§ 1.501-1.640	15.00	Apr. 1, 1987
§§ 1.641-1.850	17.00	Apr. 1, 1987
§§ 1.851-1.1000	27.00	Apr. 1, 1987
§§ 1.1001-1.1400	16.00	Apr. 1, 1987
§§ 1.1401-End	20.00	Apr. 1, 1987
2-29	20.00	Apr. 1, 1987
30-39	13.00	Apr. 1, 1987
40-49	12.00	Apr. 1, 1987
50-299	14.00	Apr. 1, 1987
300-499	15.00	Apr. 1, 1987
500-599	8.00	[2] Apr. 1, 1980
600-End	6.00	Apr. 1, 1987
27 Parts:		
1-199	21.00	Apr. 1, 1987
200-End	13.00	Apr. 1, 1987
28	21.00	July 1, 1986
29 Parts:		
0-99	16.00	July 1, 1986
100-499	7.00	July 1, 1987
500-899	24.00	July 1, 1987
900-1899	10.00	July 1, 1987
1900-1910	27.00	July 1, 1986
1911-1925	6.50	July 1, 1987

Title	Price	Revision Date
1926	10.00	July 1, 1987
1927–End	23.00	July 1, 1987
30 Parts:		
0–199	16.00	[3] July 1, 1985
200–699	8.50	July 1, 1986
700–End	18.00	July 1, 1987
31 Parts:		
0–199	12.00	July 1, 1987
200–End	16.00	July 1, 1986
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	17.00	July 1, 1986
190–399	23.00	July 1, 1987
400–629	21.00	July 1, 1987
630–699	13.00	July 1, 1986
700–799	15.00	July 1, 1987
800–End	16.00	July 1, 1986
33 Parts:		
1–199	27.00	July 1, 1986
200–End	19.00	July 1, 1987
34 Parts:		
1–299	20.00	July 1, 1987
*300–399	11.00	July 1, 1987
*400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
*1–199	12.00	July 1, 1987
200–End	19.00	July 1, 1986
37	13.00	July 1, 1987
38 Parts:		
0–17	21.00	July 1, 1986
18–End	15.00	July 1, 1986
39	13.00	July 1, 1987
40 Parts:		
1–51	21.00	July 1, 1986
52	27.00	July 1, 1986
53–60	23.00	July 1, 1986
61–80	12.00	July 1, 1987
81–99	25.00	July 1, 1987
100–149	23.00	July 1, 1986
150–189	21.00	July 1, 1986
190–399	27.00	July 1, 1986
400–424	22.00	July 1, 1986
425–699	24.00	July 1, 1986
700–End	24.00	July 1, 1986
41 Chapters:		
1, 1–1 to 1–10	13.00	[5] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[5] July 1, 1984
3–6	14.00	[5] July 1, 1984
7	6.00	[5] July 1, 1984
8	4.50	[5] July 1, 1984
9	13.00	[5] July 1, 1984
10–17	9.50	[5] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[5] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[5] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[5] July 1, 1984
19–100	13.00	[5] July 1, 1984
1–100	9.50	July 1, 1986
101	23.00	July 1, 1987
102–200	11.00	July 1, 1987
201–End	8.50	July 1, 1987
42 Parts:		
1–60	15.00	Oct. 1, 1986
61–399	10.00	Oct. 1, 1986
400–429	20.00	Oct. 1, 1986
430–End	15.00	Oct. 1, 1986
43 Parts:		
1–999	14.00	Oct. 1, 1986
1000–3999	24.00	Oct. 1, 1986
4000–End	11.00	Oct. 1, 1986
44	17.00	Oct. 1, 1986
45 Parts:		
1–199	13.00	Oct. 1, 1986
200–499	9.00	Oct. 1, 1986
500–1199	18.00	Oct. 1, 1986
1200–End	13.00	Oct. 1, 1986
46 Parts:		
1–40	13.00	Oct. 1, 1986
41–69	13.00	Oct. 1, 1986
70–89	7.00	Oct. 1, 1986
90–139	11.00	Oct. 1, 1986
140–155	8.50	[6] Oct. 1, 1985
156–165	14.00	Oct. 1, 1986
166–199	13.00	Oct. 1, 1986
200–499	19.00	Oct. 1, 1986
500–End	9.50	Oct. 1, 1986
47 Parts:		
0–19	17.00	Oct. 1, 1986
20–39	18.00	Oct. 1, 1986
40–69	11.00	Oct. 1, 1986
70–79	17.00	Oct. 1, 1986
80–End	20.00	Oct. 1, 1986
48 Chapters:		
1 (Parts 1–51)	21.00	Oct. 1, 1986
1 (Parts 52–99)	16.00	Oct. 1, 1986
2	27.00	Dec. 31, 1986
3–6	17.00	Oct. 1, 1986
7–14	23.00	Oct. 1, 1986
15–End	22.00	Oct. 1, 1986
49 Parts:		
1–99	10.00	Oct. 1, 1986
100–177	24.00	Oct. 1, 1986
178–199	19.00	Oct. 1, 1986
200–399	17.00	Oct. 1, 1986
400–999	21.00	Oct. 1, 1986
1000–1199	17.00	Oct. 1, 1986
1200–End	17.00	Oct. 1, 1986
50 Parts:		
1–199	15.00	Oct. 1, 1986
200–End	25.00	Oct. 1, 1986
CFR Index and Findings Aids	27.00	Jan. 1, 1987
Complete 1987 CFR set	595.00	1987
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1986
Subscription (mailed as issued)	185.00	1987
Individual copies	3.75	1987

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 1987

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
November 2	November 17	December 2	December 17	January 4	February 1
November 3	November 18	December 3	December 18	January 4	February 1
November 4	November 19	December 4	December 21	January 4	February 2
November 5	November 20	December 7	December 21	January 4	February 3
November 6	November 23	December 7	December 21	January 5	February 4
November 9	November 24	December 9	December 24	January 8	February 8
November 10	November 25	December 10	December 28	January 11	February 8
November 12	November 27	December 14	December 28	January 11	February 10
November 13	November 30	December 14	December 28	January 12	February 11
November 16	December 1	December 16	December 31	January 15	February 16
November 17	December 2	December 17	January 4	January 19	February 16
November 18	December 3	December 18	January 4	January 19	February 16
November 19	December 4	December 21	January 4	January 19	February 17
November 20	December 7	December 21	January 4	January 19	February 18
November 23	December 8	December 23	January 7	January 22	February 22
November 24	December 9	December 24	January 8	January 25	February 22
November 25	December 10	December 28	January 11	January 25	February 23
November 27	December 14	December 28	January 11	January 26	February 25
November 30	December 15	December 30	January 14	January 29	February 29

PLUS

PUBLIC LAWS UPDATE SERVICE

ANNOUNCING A NEW INFORMATION SERVICE ABOUT NEW LEGISLATION!

DO YOU NEED TO KNOW THE PUBLIC LAW NUMBER FOR A BILL JUST SIGNED BY THE PRESIDENT?

WOULD YOU LIKE TO HAVE THE UNITED STATES STATUTES AT LARGE CITATION FOR A NEW LAW?

THE OFFICE OF THE FEDERAL REGISTER IS PLEASED TO ANNOUNCE P L U S, THE PUBLIC LAWS UPDATE SERVICE.

THIS NEW RECORDED SERVICE PROVIDES THE FOLLOWING INFORMATION ABOUT NEW PUBLIC LAWS:

- ***BILL NUMBER***
- ***PUBLIC LAW NUMBER***
- ***DATE SIGNED BY THE PRESIDENT***
- ***U.S. STATUTES CITATION***

IN ADDITION, P L U S WILL ALERT YOU TO LEGISLATION AWAITING APPROVAL AND NOT YET RECEIVED.

BEST OF ALL, P L U S IS AVAILABLE 24 HOURS A DAY.

SO DON'T WAIT FOR IMPORTANT INFORMATION ABOUT THE LAWS.

CALL P L U S ! ! !

(202) 523-6641