

Federal Register

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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:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

- WHEN:** January 23, 1996 at 9:00 am and February 6, 1996 at 9:00 am
- WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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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.

New Feature in the Reader Aids!

Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register

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Wednesday, January 17, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1011, and 1046

[Docket No. AO-388-A8 et al.; DA-94-12]

Milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the pooling standards of the Tennessee Valley and Carolina orders; modifies the marketing areas of the Tennessee Valley and Louisville-Lexington-Evansville orders; changes the location adjustment under the Carolina order for plants located in the Middle Atlantic marketing area; and changes the base-paying months under the Carolina order. The amendments are based upon industry proposals considered at a public hearing held on January 4, 1995. Each amended order was approved by more than two-thirds of the producers voting in the specified marketing area.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has

certified that this rule will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:
Notice of Hearing: Issued November 21, 1994; published November 25, 1994 (59 FR 60574).

Recommended Decision: Issued August 17, 1995; published August 24, 1994 (60 FR 43986).

Final Decision: Issued December 4, 1995; published December 18, 1995 (60 FR 65023).

Findings and Determinations

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing

agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure (7 CFR Part 900).

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

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

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

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

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

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

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

(3) The issuance of the order amending the orders is favored by at least two-thirds of the producers who during August 1995 were engaged in the production of milk for sale in the aforesaid marketing areas.

List of Subjects in 7 CFR Part 1005, 1011, 1046

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR parts 1005, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

2. In § 1005.7, the reference “(d)” in the introductory text is revised to read “(e)”, in paragraph (b) the words “Director of the Dairy Division” and “Director” are revised to “market administrator” wherever they appear, paragraph (d) is redesignated as paragraph (e) and revised, and a new paragraph (d) is added to read as follows:

§ 1005.7 Pool plant.

* * * * *

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) The term “pool plant” shall not apply to the following plants:

- (1) A producer-handler plant;
- (2) A governmental agency plant;
- (3) A plant with route disposition in this marketing area that is located within the marketing area of another Federal order and that is fully regulated under such order;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area but which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.

§ 1005.32 [Amended]

3. In § 1005.32(a), the words “March through June” are revised to read “February through May” wherever they appear.

4. In § 1005.53, paragraph (a)(6) is redesignated as paragraph (a)(7) and revised, and a new paragraph (a)(6) is added to read as follows:

§ 1005.53 Plant location adjustments for handlers.

* * * * *

(a) * * *

(6) For a plant located within the Middle Atlantic Federal Order Marketing Area (Part 1004), the adjustment shall be computed by subtracting the base zone Class I price specified in § 1005.50(a) from the Class I price applicable at such plant under the Middle Atlantic Federal Order; and

(7) For a plant located outside the areas specified in paragraphs (a)(1) through (a)(6) of this section, the adjustment shall be a minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina, or Charlotte or Greensboro, North Carolina.

§ 1005.61 [Amended]

5. In § 1005.61 paragraphs (a) introductory text and (a)(5), the words “July through February” are revised to read “June through January” and in paragraph (b) introductory text the words “March through June” are revised to read “February through May”.

§§ 1005.90 and 1005.91 [Amended]

6. In §§ 1005.90 and 1005.91, the words “March through June” are revised to read “February through May” wherever they appear.

§ 1005.93 [Amended]

7. In § 1005.93 paragraph (b), the words “March through June” are revised to read “February through May” wherever they appear, the words “February 1” are revised to read “January 1”, and in paragraph (e) introductory text the words “March 1” are revised to read “February 1”.

§ 1005.94 [Amended]

8. In § 1005.94, the words “February 1” are revised to read “January 1”.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

9. Section 1011.2 is amended by revising paragraph (b) to read as follows:

§ 1011.2 Tennessee Valley Marketing Area.

* * * * *

(b) In Kentucky, the counties of Bell, Breathitt, Clay, Harlan, Jackson, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, and Whitley.

* * * * *

10. In § 1011.7, the reference “(d)” in the introductory text is revised to read “(e)”, paragraph (b) is revised, paragraph (d) is redesignated as paragraph (e) and revised, and a new paragraph (d) is added to read as follows:

§ 1011.7 Pool plant.

* * * * *

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to plants described in paragraph (a) of this section subject to the following additional conditions:

(1) During the months of August through November, January and February, such shipments must equal not less than 60 percent (40 percent during the months of December and March through July) of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month at such plant from handlers described in § 1011.9(c) and (d) and from dairy farmers, including milk that is diverted from the plant pursuant to § 1011.13 but excluding milk diverted to the plant;

(2) The operator of a plant described in this paragraph may include milk diverted from the plant to plants described in paragraph (a) of this section for up to one-half of the shipments required pursuant to this paragraph;

(3) A plant which meets the shipping requirements specified in this paragraph during the months of July through February shall be a pool plant during the following months of March through June unless the milk received at the plant does not continue to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (b)(4) of this section, or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and for each subsequent month through June during which it would not otherwise qualify as a pool plant; and

(4) The shipping requirements described in paragraph (b)(1) and (b)(3) of this section may be increased or decreased up to 10 percentage points by the market administrator if he or she

finds that revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either at his or her own initiative or at the request of interested persons. If the investigation shows that a revision may be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) The term "pool plant" shall not apply to the following plants:

- (1) A producer-handler plant;
- (2) A governmental agency plant;
- (3) A plant with route disposition in this marketing area that is located within the marketing area of another Federal order and that is fully regulated under such order;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area but which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.

§ 1011.13 [Amended]

11. In § 1011.13 paragraph (e)(3), the words "Director of the Dairy Division" and "Director" are revised to read "market administrator" wherever they appear.

12. Section 1011.52(a)(3) is revised to read as follows:

§ 1011.52 Plant location adjustments for handlers.

(a) * * *

(3) For such milk which is physically received at a plant located within the Kentucky counties of Bell, Breathitt, Clay, Harlan, Jackson, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, and

Whitley, the Class I price shall be decreased by 32 cents; and

* * * * *

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

§ 1046.2 [Amended]

13. In § 1046.2, in the list of Kentucky counties, the word "Pulaski" is removed.

Dated: January 2, 1996.

Michael V. Dunn,
Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96-324 Filed 1-16-96; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-AGL-14]

Amendment of Class E Airspace; Britton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Britton, SD. A nondirectional radio beacon (NDB) or Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 13 has been revised for the Britton Municipal Airport. The intended effect of this action is to provide controlled airspace extending upward from 700 feet above ground level (AGL) and 1200 feet AGL for aircraft executing the approach.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Eleanor J. Williams, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On October 30, 1995, the FAA proposed to amend part 71 of the Federal Aviation regulations (14 CFR part 71) by modifying the Class E airspace area at Britton, SD (60 FR 55226). The proposal was to add controlled airspace to accommodate the revised NDB or GPS SIAP.

Interested parties were invited to participate in this rulemaking proceeding by submitting written

comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth, are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Britton, SD, by providing additional controlled airspace for aircraft executing the NDB or GPS Runway 13 SIAP at Britton Municipal Airport. Controlled airspace extending upward from 700 feet AGL and 1200 feet AGL is needed for aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Britton, SD [Revised]

Britton Municipal Airport
(lat. 45°48'57" N, long. 97°44'39" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Britton Municipal Airport and that airspace extending upward from 1,200 feet above the surface bounded on the west by long. 98°30'00" W., on the north by lat. 46°30'00" N., on the east by long. 97°00'00" W., and on the south by lat. 44°30'00" N., excluding the Fargo, ND; Watertown, SD; Huron, SD; Aberdeen, SD; 1,200 foot Class E airspace areas and all federal airways.

* * * * *

Issued in Des Plaines, Illinois on December 29, 1995.

Jeffrey L. Griffith,

Acting Manager, Air Traffic Division.

[FR Doc. 96-373 Filed 1-16-96; 8:45 am]

BILLING CODE 4910-13-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 505, 519, 520, 532, 533, and 552

[APD 2800.12A, CHGE 69]

RIN 3090-AF87

General Services Administration Acquisition Regulation; Implementation of FASA Small Business; Protest, Disputes and Appeals; Subcontractor Payments Rules, and Service Contract Funding

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to implement several sections of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) which related to protests, disputes and appeals; subcontractor payments, service contract funding and small business programs. This change revises the GSAR to accommodate those changes and to reflect current organizational changes within GSA. In addition, GSA Form 2677, Minority Contract Fact Sheet, is

removed and GSA Form 2689, Procurement Not Set Aside, is revised to illustrate the new edition of the form.

EFFECTIVE DATE: December 29, 1995.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of GSA Acquisition Policy, (202) 501-4764.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the Federal Register for public comment because it merely revises the GSAR to conform to the Federal Acquisition Regulation (FAR) and makes organizational changes within GSA.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget for review because it is not a significant rule as defined in Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.501-1.

D. Paperwork Reduction Act

This rule does not impose any information collection or recordkeeping requirements that require the approval of OMB under 44 U.S.C. 3501 *et seq.* Therefore, the requirements of the Paperwork Reduction Act do not apply.

List of Subjects in 48 CFR Parts 505, 519, 520, 532, 533, and 552

Government procurement.

Accordingly, 48 CFR Parts 505, 519, 520, 532, 533 and 552 are amended as follows:

1. The authority citation for 48 CFR Parts 505, 519, 520, 532, 533, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 505—PUBLICIZING CONTRACT ACTIONS

2. Section 505.303-70 is amended by revising paragraphs (a)(1), (b)(1), (b)(2), and (b)(3)(ii) to read as follows:

505.303-70 Notification of proposed substantial awards and awards involving Congressional interest.

(a) * * *

(1) A contract with the Small Business Administration (the 8(a) program) exceeding or estimated to exceed \$100,000.

* * * * *

(b) * * *

(1) The Office of Congressional and Intergovernmental Affairs (S) will notify the heads of contracting activities in

writing with the names of Members of Congress who wish to be notified of any or all contract awards in excess of \$100,000 to contractors located within their district or State, as applicable. Upon such notification, the contracting activities will provide, via electronic mail, facsimile or hand delivery applicable notices of award to S. A copy of the submittal should be provided to the regional congressional liaison office.

(2) Except for submittals hand delivered to S, the submittal must be made by electronic mail or facsimile transmission. Except for contracts awarded under urgent and compelling circumstances, notification to S of an award must be made on the same day that the award is made and 24 hours before telephonic notice (if applicable) is provided to the contractor. If the timeframe for notification to S cannot be met, the Contracting Director must notify S by telephone.

(3) * * *

(ii) Identify the type of contract and contractor using the following codes:

(A) *DO* for definite quantity contract.

(B) *SC* for schedule contract.

(C) *TC* for indefinite delivery contract other than schedule.

(D) *S* for small business concern.

(E) *SD* for small disadvantaged business concern.

(F) *WO* for women-owned small business concern.

(G) *O* for other than a small business concern.

* * * * *

3. Part 519 is amended by revising the heading to read as follows:

PART 519—SMALL BUSINESS PROGRAMS

4. Section 519.001 is revised to read as follows:

519.001 Definitions.

Agency small business technical advisors (SBTAs) as used in this part, means the individuals designated in writing by the Office of Enterprise Development (E). In addition to the duties outlined at FAR 19.201(c), the agency small business technical advisors perform the functions of the small business specialist described in FAR 19.506 (a) and (b) and 19.705-4(d)(5).

5. Section 519.201 is revised to read as follows:

519.201 General policy.

The Associate Administrator for Enterprise Development (E) may make recommendations to the contracting officer as to whether a particular acquisition should be awarded under

FAR 19.5 as a set-aside or under FAR 19.8 as a section 8(a) award directly or through the SBTA.

6. Section 519.202-2 is revised to read as follows:

519.202-2 Locating small business sources.

Contracting officers should request assistance from SBTAs in locating small business sources.

519.202-5 [Removed]

7. Section 519.202-5 is removed.

8. Section 519.502-70 is amended by revising paragraphs (a) and (d) to read as follows:

519.502-70 Review of non-set-aside determinations.

(a) If the contracting officer decides that a procurement that is expected to exceed \$100,000 cannot be set aside for small business, the reasons for the decision must be recorded on the GSA Form 2689, Procurement Not Set Aside. The GSA Form 2689 must be submitted to the SBTA for review and coordination with the SBA.

* * * * *

(d) Before the GSA or SBA reviewing officials provide additional small business sources to the contracting officer when requesting reconsideration of the non-set-aside determination, the reviewing officials shall contact the sources to ensure the sources are interested in submitting offers and to obtain information regarding the capability of the sources to fulfill the Government's requirements. The information obtained should be provided to the contracting officer for consideration.

* * * * *

519.503 [Amended]

9. Section 519.503 is amended in the last sentence of paragraph (b) format: "Small Business Class Set-Aside Determination," by removing the words "for which small purchase procedures are to be used" and inserting in their place "of \$100,000 or less."

519.602-3 [Amended]

10. Section 519.602-3 is amended by removing the office symbol "AU" once in paragraph (a) and where it appears three times in paragraph (b) and inserting office symbol "E" in its place.

11. Subpart 519.7 is amended by revising the heading to read as follows.

Subpart 519.7 Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

12. Section 519.708 is revised to read as follows:

519.708 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.219-72, Notice to Offerors of Subcontracting Plan Requirements, on the cover page of the solicitation if the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(b) The contracting officer shall insert the provision at 552.219-73, Preparation, Submission, and Negotiation of Subcontracting Plans, in negotiated solicitations if the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, and the contract will be awarded on the basis of an evaluation of technical and/or management proposals and cost or price proposals using source selection procedures. The provision does not apply to (1) solicitations for commercial products, or (2) solicitations where, in the judgment of the contracting officer, subcontracting opportunities are minimal.

(c) The contracting officer shall insert the provision at 552.219-74, Goals for Subcontracting Plan, in sealed bid solicitations if the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. The basic provision should be used when the contracting officer is able to realistically establish target goals. Alternate 1 should be used in sealed bid solicitations when the contracting officer cannot establish realistic target goals and in negotiated solicitations that include the clause at FAR 52.219-9 but do not include the provision at 552.219-73.

13. Section 519.803-70 is revised to read as follows:

519.803-70 Contracting officer evaluation of recommendations for 8(a) set-aside(s).

If the Associate Administrator for Enterprise Development (E) or the SBTA recommends that a procurement be set aside for award under the 8(a) program and the contracting officer disagrees, the contracting officer shall discuss the matter with the official that made the recommendation before making a decision. If the contracting officer decides not to award the contract under the 8(a) program as recommended, the reasons for the decision must be documented for the record as required by FAR 19.202 and a copy of the documentation must be forwarded to E

within 10 working days of the contracting officer's decision.

PART 520—[RESERVED]

14. Part 520 is removed and reserved.

PART 532—CONTRACTING FINANCING

15. Sections 532.112 and 532.112-1 are added to read as follows:

532.112 Payment of subcontractors under contracts for non-commercial items.

532.112-1 Subcontractor assertions of nonpayment.

Contracting officers who determine that a certification of payment of a subcontractor or supplier under FAR 32.112-1 is inaccurate in any material respect shall report the matter to the Office of Inspector General. If appropriate, the Office of Inspector General will forward a report and recommendation to the Department of Justice.

16. Section 532.705-1 is revised to read as follows:

532.705-1 Clauses for contracting in advance of funds.

The contracting officer shall insert the clause at 552.232-77, Availability of Funds, in solicitations and contracts for services which are "severable" when the contract, or a portion of the contract, will be chargeable to funds of the new fiscal year and the circumstances described in the prescriptions for the FAR clauses at 52.232-18 or 52.232-19 do not apply.

PART 533—PROTESTS, DISPUTES, AND APPEALS

17. In Section 533.104 paragraph (a) the heading is revised to read: "General procedures," the FAR cite in paragraph (a)(1) is revised to read "FAR 33.104(a)(3);" remove "25 workdays" in paragraph (a)(3)(v) and insert "35 days,"; revise the FAR cite in paragraph (b)(5) introductory text to read "FAR 33.104(a)(2), remove the words "within 7 calendar days of receiving this notice" in the last paragraph of (a)(5), remove the word "calendar" in the first sentence of paragraph (b), and revise paragraphs (c) and (d) to read as follows:

533.104 Protests to GAO.

* * * * *

(c) *Protests after award.* If the protest is received from GAO (not from protester or any other party) within the time periods specified in FAR 33.104(c) contract performance must be suspended unless the HCA determines in writing that contract performance is in the best interests of the United States

or that urgent and compelling circumstances that significantly affect the interests of the United States do not permit waiting for the GAO's decision. The written determination and findings (D&F), in the format shown at 501.704-70(e)(2), should be prepared by the contracting officer for signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate AGC. After the D&F is approved, it must be returned to the AGC who notifies GAO of the agency's findings and intended action before contract performance is authorized.

(d) *Notice to GAO.* The HCA responsible for the solicitation, proposed award, or award of the contract must report to the Comptroller General through the OGC within 65 days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation. The report must explain the reasons why the GAO's recommendation will not be followed.

533.105 [Amended]

18. In section 533.105 paragraph (a)(1) introductory text, remove the words "Resources Management" after the word "Information" and insert in their place "Technology."

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.219-9 [Removed]

19. Section 552.219-9 and its Alternate I are removed.

552.219-16 [Removed]

20. Section 552.219-16 is removed.
21. Section 552.219-72 is revised to read as follows:

552.219-72 Notice to Offerors of Subcontracting Plan Requirements.

As prescribed in 519.708(a), insert the following provision:

NOTICE OF OFFERORS OF SUBCONTRACTING PLAN REQUIREMENTS (DEC 1995)

The General Services Administration (GSA) is committed to assuring that maximum practicable opportunity is provided to small, small disadvantaged, and women-owned small business concerns to participate in the performance of this contract consistent with its efficient performance. GSA expects any subcontracting plan submitted pursuant to FAR 52.219-9, Small, Small Disadvantaged and Women Owned Small Business Subcontracting Plan, to reflect this commitment. Consequently, an offeror, other than a small business concern, before being awarded a contract exceeding \$500,000 (\$1,000,000 for construction) will be required

to demonstrate that its subcontracting plan represents a creative and innovative program for involving small, small disadvantaged, and women-owned small business concerns as subcontractors in the performance of this contract.

(End of Provision)

552.219-73 [Amended]

22. In section 552.219-73 introductory text revise the GSAR cite to read "519.708(b)," and revise the date of the clause to read "DEC 1995"; in paragraph (b) of the clause remove the GSAR cite "552.219-9(d)" and insert in its place "FAR 52.219-9(d)." Also in paragraph (b) second sentence, revise the phrase "Small Business" to read "Small, Small Disadvantaged and Women-Owned Small Business"; in paragraph (c)(1) remove "552.219-9" and insert in its place "FAR 52.219-9."

552.219-74 [Amended]

23. In section 552.219-74 introductory text, revise the GSAR cite to read "519.708(c)," revise the clause date to read "(DEC 1995)," in paragraph (a)(1) of the clause remove all the text after the word "at" at the end of paragraph (a)(1) and insert in its place "FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan;" in paragraph (a)(2) remove "552.219-9(d)" and insert in its place "FAR 52.219-9(d); in paragraph (c)(1) remove "552.219-9" and insert in its place "FAR 52.219-9."

Dated: December 14, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

[FR Doc. 96-265 Filed 1-16-96; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92-29; Notice 9]

RIN 2127-AF96

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule, notice to extend time period for petitions for reconsideration.

SUMMARY: This document extends the period of time to submit petitions for reconsideration of a final rule published

on December 13, 1995 that responded to petitions for reconsideration of a final rule that amended Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems*, to require medium and heavy vehicles be equipped with an antilock brake system (ABS).

DATES: *Petitions for Reconsideration:*

Any petitions for reconsideration of the December 13, 1995 final rule must be received by NHTSA no later than January 29, 1996.

ADDRESSES: Petitions for reconsideration should refer to Docket No. 92-29, Notice 7 and should be submitted to:

Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin L. Shaw, NCC-20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-2992.

SUPPLEMENTARY INFORMATION: On December 13, 1995, NHTSA published a final rule responding to petitions for reconsideration of final rules addressing the brake performance of medium and heavy vehicles. (60 FR 63965). The December final rule required petitions for reconsideration to be submitted no later than January 12, 1996.

On December 5, 1995, NHTSA published a final rule that amended NHTSA's procedural rules. (60 FR 62221) Among other things, that rule provided that the agency will accept petitions for reconsideration of a final rule, if they are received not more than 45 days after the publication of the final rule. Previously, petitions for reconsideration had to be received not more than 30 days following publication of a final rule.

NHTSA inadvertently did not apply this new procedural amendment to the December 13, 1995 final rule that addressed heavy vehicle brake performance. Given that the new procedural amendments should have applied to that notice, the agency is extending the period of time that interested parties may submit petitions for reconsideration an additional 15 days. Accordingly, any petitions for reconsideration of the December 13, 1995 final rule must be received by NHTSA no later than January 29, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96-439 Filed 1-11-96; 2:23 pm]

BILLING CODE 4910-59-P

Proposed Rules

Federal Register

Vol. 61, No. 11

Wednesday, January 17, 1996

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service and Community Development

Rural Business and Cooperative Development Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1944

RIN 0575-AB93

Processing Requests for Section 515 Rural Rental Housing (RRH) Loans

AGENCIES: Rural Housing Service and Community Development, Rural Business and Cooperative Development Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCD), a successor Agency to the Farmers Home Administration (FmHA), proposes to amend its regulations for processing loan requests for Rural Rental Housing (RRH) assistance. This action is taken to strengthen the priority point system and improve loan processing procedures to better accomplish the program's purpose of providing rental housing to rural areas of greatest need.

DATES: Written comments on this Proposed Rule must be received on or before March 8, 1996.

ADDRESSES: Submit written comments, *in duplicate*, to the Office of the Chief, Regulation Analysis and Control Branch, Rural Housing Service, U.S. Department of Agriculture, Ag Box 0743, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250. All written comments will be available for public inspection at the above address during normal working hours.

FOR FURTHER INFORMATION CONTACT: Linda Armour, Loan Specialist, Multi-Family Housing Processing Division,

Rural Housing Service, USDA, Room 5349—South Building, Ag Box 0781, Washington, D.C. 20250, telephone (202) 720-1608.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not-significant for purposes of Executive Order 12886 and therefore has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575-0047, in accordance with the Paperwork Reduction Act of 1995. This proposed rule does not impose any new information collection requirements from those approved by OMB.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with Sub-title H of Title II of Pub. L. 103-354 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly,

more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

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

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Background/Discussion

RHS utilizes a point-score system to prioritize rural areas according to their potential need for RRH assistance, based on statutory requirements and preferences. Priority points ranging from

0 to 40 are assigned to rural counties and places based on their rural median household income compared to the state's rural median income; priority points ranging from 0 to 40 are similarly assigned based on the county's or place's percentage of substandard housing compared to the state's percentage. In addition, points are used to accomplish two preferences required by statute: (1) Section 515(z) of the Housing Act of 1949 (7 U.S.C. 1485(z)) requires the Secretary to give preference to any project that will serve the needs of a rural community located 20 or more miles from an urban area. Twenty-five points are given for this purpose. (2) Section 515(j) of the Housing Act of 1949 (7 U.S.C. 1485(j)) requires that, "For the purpose of achieving the lowest cost in providing units in newly constructed projects assisted under this section, the Secretary shall give a preference in entering into contracts under this section for projects which are to be located on specific tracts of land provided by states, units of local government, or others if the Secretary determines that the tract of land is suitable for such housing, and that affording such preference will be cost effective." Five points are given to accomplish this preference.

Recent findings indicate that the priority point system is not always effective in directing RRH funds to rural areas with the greatest need for affordable housing. One reason cited for this is that, by awarding 25 points for proposals located 20 or more miles from an urban area, other eligible rural communities with equal or higher scores for income and substandard housing, and with comparable or greater demand, have been excluded from successfully competing for funds. The large number of points given for the mileage preference has also led, in some cases, to the development of units in remote areas with insufficient demand, resulting in slow rent-up and/or vacancy problems. Another concern is the overdevelopment of these high-pointed areas because of the competition to submit preapplications with the highest point score.

Recent regulatory revisions have addressed the latter concern. Effective October 1, 1993, (58 FR 44255) the Agency implemented its "build and fill" policy which prohibits the authorization of RRH units in communities where similar-type units are already approved, under construction, or have not achieved their projected occupancy level; or where similar-type units are experiencing vacancy problems or have a Servicing Market Rate Rent (SMR) pending or in effect. This policy has

been effective in deterring overdevelopment of high-pointed areas and will continue to be followed by the Agency.

To address concerns that the large number of points awarded to proposals located 20 or more miles from urban areas has excluded other eligible rural areas, we propose to reduce the number of points for this factor. This will enable more areas to compete on the basis of income and substandard housing.

The Agency will continue to award 5 points for proposals with donated land. However, we propose to modify this section to award 5 points for proposals with donated land or proposals that provide grants for at least 10 percent of the total development cost.

A recent legislative amendment contained in H.R. 3838 and S. 2049 in FY 95 which would have allowed the Secretary to discontinue the priority point system and, instead, select rural areas for RRH assistance based on objective criteria, failed to be enacted. The Agency supports and continues to seek this statutory authority, which would give RHS more flexibility in directing Section 515 funds to rural areas of greatest need. The regulatory revisions in this proposed rule partially address concerns raised over the priority point system. To fully address these concerns, statutory changes are needed. The proposed revisions represent an improved system based upon significant input from the public and RHS field employees.

In addition to the revisions to the priority point system, we are proposing modifications to the market analysis requirements and the market review process. The changes are intended to improve the Agency's ability to evaluate market demand and reduce the risk of developing units in areas with insufficient demand.

In recent years Section 515 funding levels have been severely reduced while the need and demand for affordable rental units in rural areas continues to grow. To develop as many RRH units as possible, it has become increasingly important to develop partnerships with state and local communities and other parties with an interest in developing low-income housing. The proposed rule includes guidance on loan proposals in which the Agency is participating with other funding sources.

1. The following revisions are proposed to the priority point system:

a. The Agency plans to award 10 points for proposals that will serve rural communities 20 or more miles from an urban area. Ten points gives preference to truly rural areas but is not so great

that it excludes other rural communities from competing.

b. The Agency is proposing to award priority points for loan requests in areas with the highest share or percentage of rural renter households at or below 60 percent of the county median income who are paying in excess of 30 percent of their household income for rent. Along with income and substandard housing, this is a statistically measurable indicator of potential need for affordable housing. A further consideration, however, is whether the need is for additional units or for additional subsidies to make existing units more affordable. The Agency's build and fill policy prohibits development of new units if the need is for rent subsidies and not for additional units. If this option is implemented, points will be calculated in a manner consistent with the method used for income and substandard housing.

2. The Agency is inviting comments on the following additional factors which are being considered for inclusion in the priority point system. These changes are not included in the proposed rule text; however, the Agency is interested in comments, for and against the proposed changes, and may include some form of the changes in the final rule.

a. To maximize program funds, encourage partnerships with states and local communities, and provide service to areas and/or households that are underserved, we are considering awarding points for proposals that are partially funded from other sources. Proposals would be subject to specific conditions: (1) The total debt service would need to be comparable to that of a RHS loan; (2) For limited profit borrowers, the profit base for determining return to owner would be made in accordance with § 1944.215(n). The borrower contribution would be based on the total development cost or security value and could not exceed the 3 or 5 percent borrower contribution required by § 1944.213 (b), except as permitted by § 1944.215 (n); (3) The total of all loans and grants could not exceed the amount needed to make the project affordable; and (4) Construction would be subject to the cost containment provisions of § 1944.215(a).

b. To ensure that underserved areas receive consideration, the Agency is considering awarding points to projects located in underserved counties identified by the Secretary using specific, objective criteria. Points awarded under this provision would be retained even if the preapplication is not authorized in the fiscal year the area was designated underserved. This factor

would not be implemented if the set aside for targeted areas is included in the program reauthorization in the future.

c. We are soliciting comments on the merits of modifying the present method of awarding points for income and substandard housing. The Agency presently awards points for income based on the county's or area's rural median income compared to the State's rural median income. The method under consideration awards points for income based on the place's or county's share of rural households with incomes at or below 60 percent of the county rural median income. The place's or county's share would be based on one of three different approaches, which produce different results in point scores. The first approach calculates the percentage of rural households at or below the county rural median income as a percentage of the place's or county's total rural households. For example, in County 1, Place A has 1,600 households, of which 450 are at or below 60 percent of the county rural median income. Place A has a percentage of 28 for income (450/1,600). Place B, with 9,000 households and 450 households at or below 60 percent of the county rural median income, has a percentage of 5 for income (450/9,000). Using this approach, although both places have the same number of households at or below 60 percent of county rural median, Place A would receive the higher number of priority points for income. The second approach calculates the place's percentage of rural households at or below 60 percent of the county rural median income as a percentage of the county's total rural households at or below 60 percent of the county rural median income. Using the same two places as an example, if County 1 has a total of 1,200 rural households that are at or below 60 percent of the county rural median income, both Place A and Place B would have a percentage for income of 37.5 (450/1,200) and would score the same number of priority points for income. The county's percentage would be calculated as a percentage of the State's total. The third approach calculates the percentage of the place's or county's rural households at or below 60 percent of the county rural median income as a percentage of the State's total rural households at or below 60 percent of the county rural median income. Continuing with the same example, if the State has a total of 200,000 households that are at or below 60 percent of the county rural median income, Place A and Place B would again have the same percentage of the

total (450/200,000) and score the same number of priority points. However, Place C in County 2, with a population of 8,000 and 800 households at or below 60 percent of the county rural median income, has a higher percentage of the State's total than Places A and B and scores a higher number of priority points. The Agency would like comments on the merits of considering the place's or county's share of households at or below 60 percent of the county rural median income and, if implemented, which of the three approaches should be used as the basis for calculating the place's and county's percentage. The third approach, which calculates the place's or county's percentage as a percentage of the State's total, has the potential of directing points to larger rural communities or counties but would reach the largest numbers of households that are at or below 60 percent of the county rural median income. Based on the comments received, the Agency will decide if the proposed method should be implemented and, if so, which of the three approaches for calculating points should be used. The method and approach that is used to award points for income will also be used to award points for substandard housing and for rent overburden if the rent-overburden option is implemented. Again, the three approaches for calculating percentages for income, substandard housing, and rent-overburden are: (1) as a percentage of the place's or county's total households; (2) as a percentage of, respectively, the county's total rural households at or below 60 percent of the county rural median income, the county's total rural households in substandard housing, or the county's total rural households at or below 60 percent of income paying in excess of 30 percent of their income for rent; and (3) as a percentage of, respectively, the State's total rural households at or below 60 percent of county rural median income, the State's total rural households in substandard housing, or the State's total rural households at or below 60 percent of county rural median income who are paying in excess of 30 percent of their income for rent.

3. The Agency is considering implementing a preliminary preapplication stage and/or preliminary market analysis process. The objective is to require sufficient information to enable the Agency to make a preliminary determination of eligibility and feasibility, while reducing the cost to the applicant for proposals that lack sufficient priority for funding, as well as

reducing Agency review time. Proposals that appear to be eligible and feasible, and have sufficient priority to be potentially funded within 24 months, would be invited to submit a full preapplication and/or market study. No further preapplications would be considered for the market area pending receipt of the complete preapplication and/or market study within a specified timeframe. Further processing would be based on a full eligibility and feasibility review.

We are considering: (1) A simplified preliminary preapplication stage, including a simplified preliminary market analysis, or (2) A full preapplication with a simplified market analysis. If the second option is implemented, a full market analysis will be required for the eligibility and feasibility determination.

Information required at the preliminary preapplication stage would include:

a. A description of the proposed project: type; number and bedroom size of units; related facilities, if any; loan amount; number of RA units requested; and number of units that will be targeted for Low-Income Housing Tax Credits (LIHTC).

b. Site information: site plan; evidence of site control; evidence that the site is, or will be, appropriately zoned; evidence of existing, or soon to be available, utilities; and location map showing relationship to facilities and services.

c. Preliminary budget and construction cost figures.

d. Preliminary applicant eligibility information: draft organizational papers and financial statements for each principal.

e. Preliminary plans and specifications.

f. Preliminary market information:

(1) A description of the community (population growth or decline, current economic conditions, types of employment, services and facilities).

(2) The number of households by tenure (owner or renter) and income.

(3) A survey of existing rental units including rent structure, vacancies, and, when possible, rent-up history and extent of waiting lists. The survey must include all RHS and similar assisted multifamily units and a representative sampling of conventionally financed multifamily units.

4. The Agency intends to establish a minimum priority point score of 30 for retaining preapplications. The State Director will have the authority to establish a higher or lower threshold by state, county, or other division, which must be published in a State Instruction.

5. Section 1944.211 (a)(15) is added to include specific eligibility requirements for existing or former RHS borrowers.

6. Section 1944.213 (f)(3) is revised to clarify that the provisions of this section apply to both preapplications and applications.

7. Section 1944.231 (c)(5) is revised to permit states to use a computerized tracking system to supplement or replace Form FmHA 1905-11, "Application and Processing Card - Association", provided tracking requirements are met.

8. Section 1944.231 (i) is revised to clarify that the next preapplication selected for further processing is the highest ranked preapplication as of the date that processing levels permitted (i.e., as of the date that one or more loans were obligated, making sufficient funds available within authorized funding limits).

9. Section 1944.233, "Participation with other funding sources", is added to provide guidance on RRH loans that are funded jointly by RHS and other partners with interests in developing low-income housing. With reduced program levels, joint funding allows the Agency to develop the maximum possible number of units.

10. Section 1944.234, "Actions prior to loan approval", is added to clarify that eligibility and feasibility requirements must be reviewed prior to loan approval.

11. Exhibit A-7 is modified to:

a. Require documentation regarding the availability of other credit at the servicing official's discretion.

b. Allow the State Director to authorize use of a market survey for small projects of 12 or fewer units.

c. Specify that the market analysis must address need and demand for both family and elderly households. The proposed complex type (family or elderly) will be determined by the greater need of the market.

12. Revisions are proposed to Exhibit A-8, "Outline of a Professional Market Study", to: (1) Modify the demand forecast; (2) place more emphasis on the recommended unit mix based on an analysis of household sizes and the unit mix of existing units; (3) allow current year estimates from reliable sources, which must be identified by the analyst; and (4) require the analyst to include analytical text with the demographic data.

Summary of Proposed Changes for Comments

Following is a summary of the major changes in this rule for which comments are invited:

1. A reduction in priority points from 25 points to 10 for proposals that will be located 20 or more miles from an ineligible area.

2. A proposal to award priority points based on the area's share of the state's or county's total income-eligible households who are paying in excess of 30 percent of their household income for rent.

3. While not included in the text of the proposed rule, the Agency is inviting comments on the merits of:

a. Changing the method of awarding priority points for income from the current method of comparing the place's or county's rural median income to the state's rural median income to a method that takes into consideration the place's or county's share of households below 60 percent of the county rural median income. Three approaches are being considered for calculating the place's or county's share: as a percentage of the place's or county's total households; as a percentage of the county's total rural households below 60 percent of the county rural median income; or as a percentage of the state's total rural households below 60 percent of the county rural median income. If the revised method is implemented, the same approach selected for calculating the place's or county's percentage will be implemented for substandard housing and for rent-overburden if, based on comments received, the Agency determines that rent-overburden will be added to the priority point score system.

b. Awarding points for proposals that will be partially funded from other sources.

c. Awarding points for proposals that will be located in underserved areas identified by the Secretary.

4. Implementation of a preliminary preapplication and/or market analysis process.

5. A revision to the market analysis requirements that will permit the State Director to authorize the use of a market survey for small proposals of 12 or less units under certain conditions.

6. A requirement that the market analysis address both family and elderly need and demand, which will be used in determining the type of project that is proposed.

Implementation Proposal

The subject rule proposes changes to the manner in which preapplications are processed, including the priority point system. The Agency intends to implement the revised priority point system on October 1, 1996. As of that date, all preapplications on hand, where an AD-622 inviting a formal application

has not been issued, will be subject to the revised system. All preapplications will be rerated and reranked based upon the priority point system in the final rule without regard to previous priority processing score or ranking. We do not intend to "grandfather" existing preapplications or have a "phase-in" period. RHS recognizes the impact of this action on preapplications which are in process. Potential applicants should be aware of the proposed changes when they are developing a proposal. RHS loan officials are encouraged to include information on the proposed changes to potential applicants. All other provisions of the final rule will become effective 30 days after publication of the final rule.

List of Subjects in 7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

Therefore, as proposed, part 1944, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

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

Authority: 42 U.S.C. 1489.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.211 is amended by revising the introductory text of paragraph (a)(2) and adding paragraph (a)(15) to read as follows:

§ 1944.211 Eligibility requirements.

(a) * * *

(2) Be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow establishment of rent or occupancy charges within the payment ability of eligible tenants or members.

* * * * *

(15) The applicant, including the principals, must be in compliance with the requirements of existing RHS debts and must provide regular financial and other required reports.

(i) In unusual circumstances, an applicant or principal with an approved workout plan in effect to correct deficiencies in an existing RHS debt may be considered for eligibility if the applicant or principal has been in compliance with the provisions of the workout plan for a period of time consistent with the extent of the

deficiencies; however, in no case will the period of compliance be less than 6 months. The State Director may request a waiver to this requirement for borrowers who have acted in good faith but are in non-compliance through circumstances beyond their control. The State Director will submit a request for exception to the Deputy Administrator, Multi-Family Housing, with clear documentation to support the request.

(ii) Applicants or principals, including former borrowers or principals, with serious violations such as fraud, embezzlement, or consistent fair housing violations will not meet eligibility requirements regardless of compliance with existing workout plans. Fair housing violations include, but are not limited to: racial or other discrimination or segregation in tenant selection, project location, maintenance of units, amenities, handicap accessibility, recreational facilities, or management services; failure to maintain units in a safe and sanitary condition; failure to maintain and utilize a current and meaningful Affirmative Fair Housing Marketing Plan; unacceptable Compliance Reviews.

3. Section 1944.213 is amended by revising paragraph (f)(3) to read as follows:

§ 1944.213 Limitations.

(f) * * *

(3) *Status.* When a loan proposal or project exists in the market area which meets any of the criteria established in paragraph (f)(2) of this section, loan requests in the same market area will be processed in accordance with this paragraph (f)(3) and § 1944.231 of this subpart. This does not affect the processing of loan requests in other market areas. Deferred loan requests will be kept on file subject to the same time restrictions contained in § 1944.231 (c) of this subpart.

(i) For preapplications, a preliminary eligibility and feasibility determination will be made if the priority point score warrants. If the proposal does not appear eligible and/or feasible, the preapplication will be rejected. If the proposal appears eligible and feasible but the market meets any of the conditions of paragraph (f)(2) of this section, the applicant will be informed that the preapplication appears eligible and feasible but further processing is deferred until the conditions of paragraph (f)(2) of this section no longer apply.

(ii) For applications to finance new units, if the market meets any of the

conditions of paragraph (f)(2) of this section, further processing of the application will be deferred until the conditions of paragraph (f)(2) of this section no longer apply.

4. Section 1944.215 is amended by revising paragraphs (n)(1) and (n)(2) to read as follows:

§ 1944.215 Special conditions.

(n) * * *

(1) Cash contributions made by the applicant, which, when added to the loan and grant amounts from all sources, does not exceed the security value of the project.

(2) The value of the building site or essential related facilities contributed by the applicant up to the amount which, when added to the loan and grant amounts from all sources, is not in excess of the security value of the project. An appraisal will be done by an RHS employee authorized to make appraisals or an RHS authorized representative in accordance with applicable RHS regulations. Value of the applicant's contribution will be determined on an "as is" basis less any amount owed on the property.

5. Section 1944.221 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1944.221 Security.

(a) *Mortgage.* Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage will be taken on the property purchased or improved with the loan, except as indicated in paragraphs (a)(1) and (a)(3) of this section and, for projects that are funded jointly by RHS and other sources, as indicated in § 1944.233 (b) of this subpart.

6. Section 1944.231 is amended by revising the heading and the introductory text, the introductory text of paragraph (c)(5), paragraphs (d)(3), (d)(4), (e)(1), (i)(1)(i), (i)(2)(i), (i)(3)(i), (i)(4)(i), and (k)(5); and by adding a new paragraph (d)(5), to read as follows:

§ 1944.231 Processing loan requests.

Loan requests will be processed in accordance with this section to assure that program intent is achieved and loan funds are utilized expeditiously and prudently. A 2-stage application process is used. A preapplication is used to determine the applicant's eligibility, project feasibility, and potential priority for loan funds, thereby eliminating proposals which have little to no chance

of success or funding. Selected preapplications will be invited to submit a formal application in accordance with this section. The State Director is responsible to coordinate efforts with HUD in accordance with Exhibit K (available in any RHS office) to determine if HUD is considering a similar request for funding or has funded a similar proposal. The State Director will provide the state agency responsible for administering LIHTC with information on projects that are allocated LIHTC, in accordance with Exhibit A-10 of this subpart. Paragraphs (a), (c)(5), (c)(6), (c)(7), (d), and (e) of this section do not apply to RCH loan requests.

(c) * * *

(5) The servicing official will rate the complete preapplication in accordance with the priority point system contained in paragraph (d) of this section. The priority point score, and any annotation, will be utilized for ranking purposes. In the event multiple preapplications of the same priority point score are received on the same day, they will be considered to be received at the same time. The order of receipt will be determined by the type of applicant and by random drawing if necessary, as follows:

(d) * * *

(3) *Projects which will serve the needs of rural communities located at least 20 miles from the RHS eligibility line around urban areas (regardless of state boundaries) considered ineligible for RHS housing loans as determined by § 1944.10 of subpart A of part 1944 of this chapter.* Ten points will be granted for complexes which are at least 20 miles from an ineligible area line over normally traveled roads. Mileage will not be rounded up or down to the nearest whole mile. In cases where the preapplication covers development of units on sites in different locations, points will be awarded based upon the location of the site in which the majority of the units will be developed. In cases of equal number of units in different locations, the distances will be averaged:

Miles	Points
20.0 or more	10
Less than 20.0	0

(4) *Projects in which a specific tract of land will be donated in accordance with § 1944.215 (r)(4) of this subpart or projects that include grants equal to at least 10 percent of the total*

development cost (TDC). Five points will be distributed as follows:

- Complexes with donated land or grants of at least 10 percent of TDC. 5 points.
- Complexes without donated land or grants of at least 10 percent of TDC. 0 points.

(5) *Projects in areas with the highest percentage of households at or below 60 percent of the county rural median income who are paying in excess of 30 percent of their household income for rent.* For this purpose, each state will use place or county data based upon the latest published census obtained from the National Office. If no place data is available, county data will be used. The State Director may request authority from the National Office to utilize other state-wide data when it is available, reliable, and determined to be in the best interest of the Agency. Up to 25 points will be awarded for households at or below 60 percent of the county rural median income paying in excess of 30 percent of the household's income for rent as follows:

Percentage of households	Points
25 and above	25
20-24.9	20
15-19.9	15
10-14.9	10
5-9.9	5
Less than	5 0

(e) * * *

(1) The feasibility determination will include a review of feedback on the market area from:

- (i) HUD (and similar lenders, if applicable), in accordance with exhibit K (available in any RHS office) and § 1944.213 (f) of this subpart.
- (ii) Local RHS office(s) closest to the market area.

* * * * *

(i) * * *

(1) * * *

(i) Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the servicing official will review the list and select the highest ranking preapplication, as of the date processing levels permit, i.e., as of the date one or more proposals were obligated, for continued processing.

* * * * *

(2) * * *

(i) Rated preapplications which have been reviewed for eligibility and

feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the servicing official will review the list and select the highest ranking preapplication, as of the date processing levels permit, i.e., as of the date one or more proposals are obligated, for continued processing.

* * * * *

(3) * * *

(i) The state will maintain ranking lists by district. Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the servicing official will review the list and select the highest ranking preapplication, as of the date processing levels permit, i.e., as of the date one or more proposals are obligated, for continued processing.

* * * * *

(4) * * *

(i) Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the servicing official will review the list and select the highest ranking preapplication, as of the date processing levels permit, i.e., as of the date one or more proposals are obligated, for continued processing.

* * * * *

(k) * * *

(5) A current copy of Form FmHA 1905-11 or State-approved automated processing or tracking card.

7. Section 1944.233 is added to read as follows:

§ 1944.233 Participation with other funding sources.

In order to develop the maximum number of affordable housing units and promote partnerships with states, local communities, and other partners with similar housing goals, participation loans are encouraged. Apartment complexes developed with participation loans may serve lower income households exclusively or may be marketed to households with mixed incomes. The following will apply:

- (a) *Amount of RHS loan participation.* RHS loan participation may not be less than 25 percent of the total development costs.
- (b) *Amount of RHS RA participation.* RHS RA can be provided on any unit where the debt service does not exceed

what the debt service would have been on that unit if RHS had provided full financing. The number of RHS RA units available for participation loans is limited and established annually through FmHA Instruction 1940-L (available in any RHS office).

(c) *General conditions:*

(1) The total funds provided by all sources may not exceed what is necessary to make the project feasible in accordance with § 1944.213 (a) of this subpart.

(2) The total debt from all sources is limited to the State Director's approval authority unless written authorization is obtained from the National Office in accordance with § 1944.213 (b) of this subpart.

(3) Complexes that will serve only lower income households must comply with the cost containment provisions of § 1944.215 (a) of this subpart. Proposals which will also serve higher income households and include additional amenities to ensure marketability must contain a portion of units that comply with RHS cost containment standards. The number of units that comply with RHS cost standards will be determined by dividing the RHS loan amount by the state's average new construction cost per unit for units developed without participation funding. For example, on a \$1 million proposal where RHS is financing \$400,000 and the state's average per-unit cost on non-participation loans is \$40,000, a minimum of 10 units must meet RHS cost containment standards.

(4) The minimum borrower contribution will be based on the RHS loan amount and determined in accordance with § 1944.213 (b) of this subpart.

(5) For limited profit borrowers, the return on investment (ROI) will be calculated in accordance with § 1944.215 (n) of this subpart on the amount actually contributed by the borrower (excluding loans and grants from other sources), not to exceed the limits established in § 1944.213 (b) of this subpart, i.e., a maximum of 3 or 5 percent of the total development cost or the security value, whichever is smaller.

(6) If Low Income Housing Tax Credits are anticipated on a proportion of units higher than the percentage receiving RA or similar tenant subsidy, the market study must clearly reflect a need and market for units without deep subsidy. It is not the intent of RHS to provide servicing RA in the future nor can RHS provide RA on units which have a debt service higher than those if RHS had provided full financing.

(d) *Security requirements:*

(1) RHS will take a first or parity lien in all instances where the Agency's participation is 50 percent or more.

(2) If RHS participation is less than 50 percent, every effort should be made to obtain a parity lien position. If a parity lien cannot be negotiated, RHS may consider securing its debt in second position. The State Director will submit requests to accept a second lien position to the Deputy Administrator, Multi-Family Housing with comments and recommendations.

(3) All lienholders must agree in writing that foreclosure action under their lien will not be initiated without first discussing with RHS and providing a reasonable notice.

(4) Security for a second or parity lien may not include project income or revenue.

8. Section 1944.234 is added to read as follows:

§ 1944.234 Actions prior to loan approval.

Prior to loan approval the application will be reviewed for continued eligibility. The applicant may be required to submit updated information at that time.

9. Exhibit A-7 of subpart E is amended by revising paragraph E of section I and by revising section II to read as follows:

Exhibits to Subpart E

Exhibit A-7—Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan

* * * * *

I. * * *

E. Evidence Concerning the Test for Other Credit—Applicants must be unable to obtain other credit at rates and terms that will allow a unit rent or occupancy charge within the payment ability of the occupants. Based upon a review of the applicant's financial condition, the servicing official may require the applicant to provide documentation regarding the availability of other credit.

* * * * *

II. Need and demand.

A. Economic justification, the number of units, and the type of facility (i.e., family, elderly, congregate, mixed, group home, or cooperative) will be based on the housing need and demand of eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) may not be included in determining need and project size. Similarly, homeowners may not be included in determining need and project size. The

market study must include a discussion of the current market for single family houses and how sales, or the lack of sales, will affect the demand for elderly rental units. The market study may discuss how elderly homeowners may reinforce the need for rental housing, but only as a secondary market and not as the primary market. The market study must assess need and demand for both family and elderly renter households. The type of complex (family, elderly, etc.) that is proposed by the applicant must reflect the greater need and demand of the community. The bedroom mix of the proposed units must reflect the need in the market area based on renter household size. For example, if the market study shows a need for one-bedroom, two-bedroom, three-bedroom, and four-bedroom units, the preapplication must contain a corresponding percentage of each size unit. Market feasibility for the proposed units will be determined by RHS based on the market information provided by the applicant, RHS' knowledge of the market area and judgment concerning the need for new units, RHS' experience with the housing market in the State and local area, and the U.S. Department of Housing and Urban Development's (HUD's) or similar lender's analysis of market feasibility for the proposed units.

B. The applicant must provide a schedule of the proposed rental or occupancy rates and, for congregate housing proposals, a separate schedule listing the proposed cost of any nonshelter service to be provided.

C. For proposals where the applicant is requesting Low-Income Housing Tax Credits (LIHTC), the applicant must provide the number of LIHTC units and the maximum LIHTC incomes and rents by unit size. This information will determine the levels of incomes in the market area which will support the basic rents while also qualifying the borrower for tax credits.

D. For Rural Cooperative Housing (RCH) proposals, market feasibility will be evidenced by the names and addresses of prospective members who have definitely affirmed their intention of becoming cooperative members in the proposed project. In the event some persons cannot be accepted for membership for financial or other reasons, the cooperative should obtain more names than the number of proposed units in order to assure adequate feasibility coverage. The Cooperative Housing Survey form found at Exhibit A-4 of this subpart and in "A Guide to Cooperative Housing" may be used for this purpose.

E. For Rural Rental Housing (RRH) proposals, except as permitted by Section II. G. of this exhibit, a professional market study is required. The qualifications of the person preparing the market study should include some housing or demographic experience. The following requirements apply:

(1) A table of contents, the analyst's statement of qualifications, and a certification of the accuracy of the study must be included.

(2) The market analyst must affirm that he/she will receive no fees which are contingent upon approval of the project by RHS, before or after the fact, and that he/she will have no interest in the housing project. An analyst

with an identity of interest with the developer will need to fully disclose the nature of the identity.

(3) The analyst must personally visit the market area and project site and must certify to same in the market study. Failure to do so may result in the denial of further participation by the analyst in the Section 515 program.

(4) A detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories, and other sources of local economic and housing information such as newspapers, Realtors, apartment owners and managers, community groups, and chambers of commerce is required. Exhibit A-8 of this subpart details the specific information which professional market studies are required to provide. The study must be presented in clear, understandable language. Negative as well as positive market trends must be disclosed and discussed. Statistical data must be accompanied by analytical text which explains the data and its significance to the proposed housing. Mathematical calculations must be expressed in actual numbers and may be accompanied by percentages. Each table or section must identify the source of the data. A brief statement of the methodology used in the study should be included in the foreword and in other sections where necessary for clarity. RHS personnel will utilize the market study checklist found at Exhibit A-12 (available in any RHS office) as a means of measuring market study credibility.

(5) The market study will include:

a. A complete description of the proposed site and its location with respect to city boundary lines, residential developments, employment centers, and transportation; the location and description of available services and facilities and their distances from the site; a discussion of the site's desirability and marketability based on its location in the community, adjacent land uses, traffic conditions, air or noise pollution, and the location of competitive housing units; and a description of the site in terms of its size, accessibility, and terrain.

b. Pertinent employment data, including the name and location of each major employer within the community and market area, its product or service, number of employees and salary range, commute times and distances, and the year the employer was established at the location. If income data cannot be obtained from individual employers, salary information for the community can be obtained from the state employment commission.

c. Population data required by Exhibit A-8, of this subpart, including population figures by year, number and percentage of increase or decrease, and population characteristics by age.

d. Household data required by Exhibit A-8, of this subpart, including number of households by year, tenure (owner or renter), age, income groups, and number of persons per household.

e. Building permits issued and demolitions by year by single unit dwelling and multiple unit dwelling. In nonreporting jurisdictions, this information may be substituted with the

number of requests for electric service connections, number of water or sewer hookups, etc., obtained from local suppliers.

f. Housing stock by tenure and vacancy rates for total number of units, one-unit buildings, two- or more-unit buildings, mobile homes, and number lacking some or all plumbing facilities.

g. A survey of existing rental housing by name, location, year built, number of units, amenities, bedroom mix, type (family, elderly, etc.), rental rates, and rental subsidies if any.

h. A projection of housing need and demand and the analyst's recommendation for the number, type, and size of units, based on the number of RHS and LIHTC income-eligible renter households, the existing comparable housing supply and vacancy rates, the absorption rate of recently completed units, the number of comparable units currently proposed or under construction, and current and projected economic conditions.

F. For congregate housing proposals with central dining area or housing involving a group living arrangement, a narrative statement from local, state, or federal government agencies supporting the current and long-range need for the facilities in the community and its trade area is required.

G. For RRH proposals of 12 or fewer units, the State Director may authorize the use of a market survey to establish market feasibility on a case-by-case basis. This authority may be used when there is evidence of strong market demand, for example, very low vacancy rates and long waiting lists in existing assisted or comparable rental units. The casefile must be documented accordingly. Exhibits A-2, A-3, and A-5 of this subpart may be used for the market survey.

* * * * *

10. Exhibit A-8 of subpart E is amended by revising the second, third, and fourth paragraphs of the introductory text of the exhibit and the introductory paragraph of section I; by adding an introductory sentence to section III; by revising in section III paragraphs B.3., B.7., C.2., and C.3.; and by revising section IV to read as follows:

Exhibit A-8—Outline of Professional Market Study

* * * * *

This outline is to be used by analysts in the preparation of market studies for the section 515 housing program. Need and demand for

both family and elderly households must be addressed in the market study. The information will be used by the Rural Housing Service (RHS) in evaluating the feasibility of the proposed housing. The analyst must provide a statement of his/her experience and qualifications for preparing a market analysis. All segments of this outline must be addressed. Data sources and/or methodology must be identified. Charts and tables must be accompanied by text which analyzes the data and discusses its significance in relationship to the proposed housing. The market study should include a summary of the analyst's findings and recommendations, preferably at the beginning of the study.

The outline provides for the demonstration of historical trends and allows the analyst to use reliable current year estimates and project 2 years into the future. Estimates and projections made by the analyst must be supported by reliable data and methodology. The analyst must include the most recent population and household estimates and projections from the State data center, or similar data source, when available. If State or other reliable estimates are not available, the analyst must provide a statement to that effect. RHS may require additional information if estimates or projections depart from historical trends and are not supported by data from reliable sources.

The estimate of need and demand will be made for both family and elderly households in accordance with section IV of this exhibit. The estimate is based on the number of renter households in the appropriate age and/or income ranges, the existing comparable rental supply, and current or planned construction of rental units. The analyst's recommendation must take into consideration existing vacancies, economic projections, and other factors that affect demand. The analyst must discuss the number of renter households that can afford and/or would be willing (based on rental rates in the market) to pay the maximum tax credit rents without rental assistance and the number of rental assistance income eligible renter households. The analyst must also take into consideration the sources of demand in determining the number of units that are recommended, i.e., the number that can be expected to be absorbed within the normal rent-up period. The absorption rate will be slower if a large portion of the demand is expected to come from households in substandard housing rather than from

household growth. Substandard housing is defined as: (1) Units lacking complete plumbing; and (2) Overcrowded (1.01 or more per room).

In addition to recommending the total number of units, the analyst must provide a recommendation for the unit mix, which must be supported by appropriate documentation, e.g., statistics on the growth rate of renter households by household size, information on the absorption rate of recently completed rental units, vacancy rates by unit size, etc.

* * * * *

I. * * *

The market area will be the community where the project will be located and only those outlying rural areas which will be impacted by the project (excluding all other established communities). The market area must be realistic. The criteria should be described by the analyst. When a difference of opinion exists in the market area determined by RHS personnel and the market analyst, the market area established by RHS will prevail. Except in specific cases of congregate housing projects where an expanded market may be justified, the market area will not include the entire county (or parish, township, or other subdivision). Any deviation from this definition must be coordinated with the servicing office. The analyst will discuss the market area in terms of its economic base and how it relates to surrounding communities, the county, and the State. For example, describe whether the market area is a small agricultural community, the county seat, a trade center, a seasonal recreational area, and so forth. A map showing the market area is required. The following is an example of a market area description:

* * * * *

III. * * *

The data presented in this section must be accompanied by analytical text which discusses the significance of the data and its relationship to the proposed housing.

* * * * *

B. * * *

3. *Households*. Provide a breakdown of households by town, market area, and county for the last 2 census years, a current year estimate, and a 2-year projection. Identify the source/method for the current year estimate and the 2-year projection.

Year	Population	In group quarters	Households	Persons per household
1980				
1990				
19__				
PROJECTED: 19__ (2 years)				

* * * * *

7. *Households by size*. Provide the number of households by household size and tenure

in the town and market area. This data should be used in conjunction with the unit mix of existing comparable units (Section III.

C. of this exhibit) to determine the appropriate unit mix for the proposed complex.

Household size	Total households	Owner	Renter
1 person			
2 person			
3 person			
4 person			
5 person			
6 person			
7 person			
8 person			
9 person			
10 person			

* * * * *
C. * * *

2. *Housing stock.* Provide, by tenure (owner/renter), the number of units and the vacancy rates for single family homes, mobile

homes, multi-family units, and substandard units, from the 2 most recent census years. Example:

Year	Single family		Vacancy rate		Multi-family	Vacancy rate	Mobile home		Vacancy rate	
	Own	Rent	Own	Rent			Own	Rent	Own	Rent
1980										
1990										

3. *Existing rental housing.* The analyst must determine where the proposed project will fit into the present housing stock. To accomplish this, the analyst will survey the existing units and discuss if the units:

- (a) Are generally comparable with the proposed units in rents and amenities;
- (b) Are less than desirable because of age or upkeep;
- (c) Are inconveniently located;
- (d) Do not provide the appropriate bedroom mix for the community need, etc.

* * * * *

IV. *Housing demand forecast.* The analyst must provide a projection of the rental housing needs for a specified forecast period, which may not be longer than 2 years from the date the market analysis is completed or updated. *The source and method used in estimating the current number of households and projecting the number of households for the forecast period must be stated.* The analyst must include a recommendation for the number of units needed based on the low-income housing tax credit (LIHTC) rents and income limits if the

applicant is applying for LIHTC; the number of units that can be supported with and without rental assistance; and the recommended bedroom mix. The recommendation for the number of units must take into consideration the expected sources of demand (i.e., household growth, households in substandard rental units), current and projected economic conditions, the absorption rates of recently completed units, and the vacancy rate of comparable units.

CALCULATION OF DEMAND

	Town	Market area
a. Total renter households based on current estimate plus 2-year projection (for elderly proposals, total age-eligible renter households)	_____	_____
b. RHS income eligible:		
X _____%	_____	_____
LIHTC income eligible:		
X _____%	_____	_____
RA income eligible:		
X _____%	_____	_____
c. Plus vacancy rate of 5 percent of:		
RHS income eligible renter households	_____	_____
LIHTC income eligible renter households	_____	_____
RA income eligible renter households	_____	_____
d. Total demand (RHS)	_____	_____
Total demand (LIHTC)	_____	_____
Total demand (RA)	_____	_____
e. Less number of comparable units	_____	_____
f. Less number of units under construction or in the planning stage	_____	_____
g. Net demand (RHS)	_____	_____
Net demand (LIHTC)	_____	_____
Net demand (RA)	_____	_____
h. Recommended number of units	_____	_____
i. Recommended number RA units	_____	_____
j. Recommended number of units by unit size based on the size of income eligible renter households and the existing supply of units by bedroom size:	_____	_____

CALCULATION OF DEMAND—Continued

	Town	Market area
1-Bedroom _____		
2-Bedroom _____		
3-Bedroom _____		
4-Bedroom _____		
5-Bedroom _____		

The source and/or methodology for the estimated and projected number of renter households: _____

Dated: January 2, 1996.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 96-328 Filed 1-16-96; 8:45 am]

BILLING CODE 3410-07-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 556, 560, 563, 571

[No. 96-1]

RIN 1550-AA94

Lending and Investment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) and the Regulatory Reinvention Initiative of the Vice President's National Performance Review, the Office of Thrift Supervision (OTS) has reviewed each of its lending and investment regulations and related policy statements set forth in the Code of Federal Regulations (CFR) to determine whether it is necessary, imposes the least possible burden consistent with safety and soundness, and is written in a clear, straightforward manner. As a result, the OTS today is proposing to update, reorganize, and substantially streamline its lending and investment regulations and policy statements.

DATES: Comments must be received on or before April 16, 1996.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 96-1. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will be available for inspection at 1700 G

Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: For general information contact: William J. Magrini, Project Manager, Supervision Policy (202) 906-5744; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906-7133; or Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Chief Counsel's Office. For information about preemption, contact Evelyne Bonhomme, Counsel (Banking and Finance), (202) 906-7052, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

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I. Background of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, the OTS identified numerous obsolete or redundant regulations that could be quickly repealed. On December 27, 1995, the OTS published a final rule in the Federal Register repealing these regulations.¹ This resulted in an eight percent reduction in OTS regulations.

As part of its review in the spring of 1995, the OTS also identified several key areas in its regulations for a more intensive, systematic regulatory burden

review. These areas—lending and investment authority, subsidiaries and equity investments, insurance and fees, and charter and bylaws—were selected for intensive review because they are vital to thrift operations, had not been developed on an interagency basis, and had not been substantively reviewed in recent years.

Today's proposal presents the results of the review of the lending and investment regulations, the first of the subject areas the OTS has identified for intensive review. Today's proposal, if adopted in final form, will reduce the number of lending and investment regulations from 43 to 23, and result in a net reduction of 11 pages of CFR text.

We reviewed each lending and investment regulation under the following criteria:

- Is the regulation current?
- Can the regulation be eliminated without endangering safety and soundness, diminishing consumer protection, or violating statutory requirements?
 - Is the regulation's subject matter more suited for a policy statement or handbook guidance?
 - Is the regulation consistent with the regulations of the other federal banking agencies?
 - Can the regulation be easily understood?

Today's proposal reorganizes the lending and investment regulations into a more rational, user-friendly framework. The proposal removes unnecessary detail from loan documentation regulations in favor of general safety and soundness requirements, removes unnecessary restrictions on the lending and investment powers of federal savings associations (including restrictions on certain commercial loans and community development investments), minimizes inequities between federal and state associations, and eliminates redundant or obsolete provisions.

This proposal was developed in consultation with those who use the regulations on a daily basis: the agency's regional examination staff and representatives of the thrift industry. Regional staff made recommendations

¹ 60 FR 66866 (December 27, 1995).

on the changes being considered. An industry focus group meeting among seven thrift representatives, an industry trade association, and OTS staff discussed staff's initial recommendations.

Both regional staff and industry representatives supported the overall approach presented. They raised some questions, however, that are addressed in the discussion below.

II. Historical Overview of Current Lending and Investment Regulations

The OTS's current lending and investment regulations have remained virtually unchanged since they were adopted in 1983, following enactment of the Garn-St Germain Depository Institutions Act of 1982 (DIA).² Before the DIA, the Home Owners' Loan Act (HOLA)³ had set forth in great detail specific lending and investment authorities and accompanying restrictions. The DIA changed this approach, modifying HOLA section 5(c) to list the broad categories of investment authorities afforded federal savings associations and to indicate which of these categories were subject to percentage-of-assets limitations. The statute provided that the HOLA 5(c) authorities could be exercised subject to regulations promulgated by the Federal Home Loan Bank Board (FHLBB), the OTS's predecessor agency. HOLA section 5(c) retains that format today, referring to the Director of the OTS, rather than the FHLBB.

Before 1983, the FHLBB's lending and investment regulations were based on the premise that HOLA's investment authorities had to be implemented expressly by regulation.⁴ That year, the FHLBB modified its lending and investment regulations to reflect a new regulatory approach, stating:

In order to grant associations the maximum flexibility to exercise the authorities granted by the HOLA, the Board has determined to revise the general approach to regulating investment activities of Federal associations.

Accordingly, Part 545 now addresses the authority of associations only to limit [or] interpret [the statutory authorizations] or [to] recognize incidental authority. Federal associations may exercise all of the authority granted by the HOLA subject only to limitations contained in the regulations.⁵

As a result, the regulations do not currently list all of a federal association's lending and investment authorities. The FHLBB emphasized that "deletion of sections specifically implementing existing authority does

not mean that any authority can no longer be exercised."⁶

As inherited from the FHLBB, today's lending and investment regulations still contain a fair amount of detail and restrictions in some areas, such as real estate lending; minimal guidance in others, such as general leasing authority; and do not mention other important investment authorities at all, such as the ability to invest in mortgage-backed securities. Many of the restrictions that the FHLBB retained in the 1983 regulations, such as loan-to-value requirements, limitations on the maximum terms of loans, and some percentage-of-assets limitations beyond those found in the statute were based on safety and soundness concerns.

While neither the basic lending and investment authorities nor the lending and investment regulations have changed greatly since 1983, the safety and soundness restrictions on both federal and state savings associations have been comprehensively revised. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989⁷ (FIRREA) imposed new capital, loans to one borrower, and appraisal requirements and tied the investment powers of state savings associations more closely to federal association powers. The Federal Deposit Insurance Corporation Improvement Act of 1991⁸ (FDICIA) required new real estate lending standards, as well as operational and managerial standards. The OTS has adopted new regulations in all of these areas, most on an interagency basis with the other federal banking agencies. A number of these regulations directly affect the ways and extent to which thrifts may make investments and loans and obviate the need for some specific provisions currently found in the lending and investment regulations.

III. Discussion

A. General Description of Objectives

The OTS is today proposing a comprehensive revision of the lending and investment regulations to reflect statutory and regulatory changes, as well as the agency's and industry's experience with the current regulations. This section will discuss the overall objectives behind today's proposal. A section-by-section analysis follows in Part III.B.

1. Removal of Unnecessary Regulations

The first objective of the OTS proposal is to remove unnecessary,

uplicative, or outdated lending and investment regulations. By clearing out the unnecessary regulations, the OTS hopes to reduce regulatory compliance costs and enhance the profitability of thrift institutions. Examples of the regulations slated for removal are § 563.97 (loans in excess of 90 percent of value), § 545.44 (mortgage transactions with the Federal Home Loan Mortgage Corporation), and § 545.37 (combination loans).

In some instances, the agency believes that safety and soundness concerns still require a regulation, but that this objective can be satisfied with a less burdensome regulation. For example, the agency is proposing to amend the scope of "commercial loans" under current § 545.46(b) to exclude commercial loans made by service corporations. This will free up additional lending authority within the statutory limit of 10 percent of assets for commercial loans by a federal savings association. The agency is also proposing to remove outdated restrictions on manufactured home loans and investments in government securities and state housing corporations.

2. Converting Regulations Into Guidance

Second, the proposal would convert certain regulatory requirements to handbook guidance. The goal of such a transfer would be to provide thrifts with guidance about what the agency considers to be generally safe and sound practices in a particular area, while giving them more flexibility in addressing safety and soundness concerns than the regulations currently allow.

In making determinations about moving specific provisions out of the lending and investment regulations and into guidance, the OTS has carefully looked at whether the other federal banking agencies have specific regulations addressing those issues, such as classification of assets and loan documentation, or whether they rely more on guidance. Thrift lending regulations traditionally have been lengthy, generally providing far more detail and leaving less room for the exercise of judgment by the industry and examiners than have bank lending regulations.

Section 303 of CDRIA encourages the federal banking agencies to move towards greater uniformity in regulations and guidelines on common supervisory issues. In the past, the federal banking agencies have worked together to develop common regulations affecting lending, notably the appraisal and real estate lending standards

² Pub. L. 97-320, 96 Stat. 1469, October 15, 1982.

³ 12 U.S.C. 1461-1470.

⁴ 48 FR 23032 (May 23, 1983).

⁵ *Id.*

⁶ 48 FR 23032.

⁷ Pub. L. 101-73, 103 Stat. 183, Aug. 9, 1989.

⁸ Pub. L. 102-242, 105 Stat. 2236, Dec. 19, 1991.

regulations. Pursuant to section 303 and in continuation of this movement towards uniformity, the OTS is proposing to shift from a more regulation-specific to a more guidance-oriented approach in its lending and investment regulations.

One example of this proposed shift in approach is loan documentation. Currently, § 563.170(c) (1)–(9) lists a number of documents that thrifts must maintain in connection with various types of secured and unsecured extensions of credit. While the document list may provide a useful checklist and may be appropriate as guidance, all transactions may not require all documents. Conversely, safety and soundness concerns for a particular transaction may necessitate different or additional documents beyond those listed in the regulation. Accordingly, the OTS proposes replacing those specific documentation requirements with a more general lending documentation regulation based on interagency safety and soundness guidelines.⁹

Both industry representatives attending the focus group meeting and regional staff raised questions about the effect of incorporating material currently in regulations into handbooks or other guidance. Some industry representatives believed that many in the industry and examination staff view the guidelines in the handbooks as equivalent to binding regulations and would not perceive a burden reduction in such a transfer. Various regional staff raised the opposite concern: that if requirements were moved from regulations to guidance the agency would find it more difficult to convince some in the industry to operate in a safe and sound manner in those areas.

By proposing to remove some specific lending regulations and to rely more heavily on general safety and soundness standards, the OTS is in no way signalling that an association would not need to maintain adequate loan documentation or to classify its assets and establish appropriate valuation allowances. Generally accepted accounting principles and principles of safety and soundness will still require these steps to be taken. In most circumstances, supervisory guidance provided in Regulatory Bulletins, Thrift Bulletins, the Thrift Activities Handbook and other sources can and should be relied upon to define safe and sound practices.

In its ongoing training programs, however, the OTS will continue to

emphasize to examiners that guidance documents should not be confused with regulations. In particular situations, it may be prudent for institutions to deviate from what is stated in standard guidance documents. Examiners and thrift management both have a responsibility to consider what is safe and sound under all the facts of each circumstance. Neither should rely on the regulations and guidance documents in rote fashion.

Provided both management and examiners understand the proper role of regulations and guidance, and the overarching requirement for safe and sound operations and practices, a move away from detailed regulations and toward greater reliance on guidance should provide institutions with more flexibility without diminishing safety and soundness. The OTS believes that regulations should be reserved for core safety and soundness requirements. Details on prudent operating practices should be relegated to guidance. Otherwise, regulated entities can find themselves unable to respond to market innovations because they are trapped in a rigid regulatory framework developed in accordance with conditions prevailing at an earlier time.

Today's proposal represents the agency's current best judgment about the right balance between which provisions affecting lending and investment should be binding regulations and which should be guidance conveying the OTS's more detailed views on what generally constitutes safe and sound standards under current market conditions. The agency specifically seeks comments on whether the proposal achieves these goals.

3. Reorganization of Lending and Investment Regulations

The agency has received comments over the years that its lending and investment regulations are hard to locate and difficult to follow. The agency is proposing two remedies for this problem. First, all lending and investment regulations will be moved into a new part 560, "Lending and Investment," that will specify which regulations apply to all savings associations (such as loan documentation, disclosure, and real estate lending standards) and which apply only to federal savings associations (such as specific lending powers). This part will include provisions currently located in parts 545 and 563 that are being modified as part of today's proposal. The OTS expects that this part will ultimately include all lending and investment regulations

except for Appraisals (located in part 564).

The OTS also proposes to remove unnecessary restatements of statutory authority and limitations from various sections of part 545. These would be replaced by a regulation in chart format that would provide easy reference to the statutory authority for, and statutory limitations on, federal associations' lending powers. Notes to the chart would set forth any additional regulatory restrictions. The agency seeks comment on whether such a chart would make it easier to locate lending authorities and to determine which restrictions apply.

Because of the FHLBB's 1983 decision that part 545 would not repeat all of HOLA section 5(c)'s lending powers but only those where additional restrictions apply, the proposed chart, based on the current part 545, is not comprehensive. Although many of the most significant authorities are listed, some more obscure authorities are not. The agency seeks comment on whether the proposed chart would be more useful if it included statutory provisions not currently set forth in the regulations.

4. Continuity of Current Position on Federal Preemption in Lending Area

One of the points made by industry representatives in the focus group meeting was that OTS should maintain a clear and consistent position on the preemptive effect of its lending regulations, especially if those regulations are restructured, amended, converted into guidance, or deleted. The OTS has long held that, with certain narrow exceptions, any state laws or regulations that purport to affect the lending operations of federal savings associations are preempted. Such preemption is essential to the OTS's regulation of the operations of federal savings associations because lending is one of the most important functions of a savings association. None of the changes discussed today should be construed as evidencing in any way an intent by the OTS to change this long-held position. Whether the OTS continues to have a specific regulation addressing a particular aspect of lending or chooses to remove a federal regulation to streamline its regulations and reduce regulatory burden, the agency still intends to occupy the entire field of lending regulation for federal savings associations.

Because the lending regulations are being moved out of Part 545 and, thus, separated from the general preemption provision that currently appears in Part

⁹Standards for Safety and Soundness, 60 FR 35674 (July 10, 1995).

545,¹⁰ the OTS is proposing to include a general lending preemption provision in new Part 560. This provision (discussed more fully in the section-by-section analysis in Section III.B.2 below) merely restates long-standing preemption principles applicable to federal savings associations, as developed in a long line of court cases and legal opinions by the OTS and the FHLBB.

B. Section-by-Section Analysis

1. Disposition of Existing Sections

Part 545 Operations (Federal Savings Associations)

Section 545.31 Election Regarding Classification of Loans or Investments

Paragraph (a) of § 545.31 sets forth the OTS's general rule that where a loan or investment meets the requirements of more than one authority, the association may elect to place it in any applicable category. The OTS proposes to retain this paragraph in modified form as new § 560.31(a).

The OTS is considering moving the description in § 545.31(a) of the essential characteristics of a loan that can be classified as a real estate loan into a separate definitional section of the regulations¹¹ along with the definition of loan commitment currently found in paragraph (b).

Paragraph (b) also provides that loan commitments are included in total assets and accounted for as an investment for purposes of determining applicable statutory or regulatory investment limitations only to the extent that funds are advanced and not repaid. The OTS proposes to combine this provision into new § 560.31(a).

Paragraph (c) addresses the treatment of loans sold to third parties for purposes of calculating percentage-of-assets investment limitations. Paragraph (d) addresses treatment of loans secured by assignment of loans. The OTS proposes to retain both paragraphs in new § 560.31.

Section 545.32 Real Estate Loans

Paragraph (a) of § 545.32 reiterates the HOLA's general grant of statutory authority for federal savings associations to make or invest in

residential (home) or nonresidential real estate loans.¹² The OTS proposes to delete this paragraph and move the statutory reference into the proposed lending/investment powers chart.

Paragraphs (b) (1) and (2) of § 545.32 duplicate more comprehensive interagency-developed real estate lending standards and appraisal standards set forth at 12 CFR 563.100–101 and 12 CFR Part 564 respectively. Accordingly, the OTS proposes to delete these paragraphs.

Paragraphs (b) (3), (4), (5), and (6) of § 545.32 discuss federal savings associations' authority to adjust the terms of real estate loans, to amortize real estate loans, to charge certain initial fees for real estate loans, and to establish escrow accounts. The HOLA expressly authorizes federal savings associations to "invest in, sell or otherwise deal in * * * loans on the security of liens upon residential real property" and "nonresidential real property."¹³ This express authorization to make real estate loans necessarily includes within it the authority to adjust and fix the terms of each loan, including loan charges, an escrow account, the terms for repayment, and the circumstances under which a repayment obligation can be modified. The OTS believes that the authority to adjust, amortize, establish escrow accounts for, and charge fees for loans properly falls within the scope of savings associations' statutory authority to originate loans, and these powers do not need to be specifically identified or restricted in the CFR.

Because these paragraphs have been relied upon in preemption opinions of the FHLBB and the OTS, the agency emphasizes that by proposing to remove these paragraphs, the OTS does not intend any change in federal thrifts' authority to conduct these activities, but rather to enhance associations' flexibility in lending. Each of these areas is specifically cited in proposed new § 560.2 as an area in which state law is preempted.

Paragraph (c) of § 545.32 defines the phrase "loan made on the security of real estate." The OTS is considering moving this paragraph to a definitional section of the regulations or deleting this paragraph entirely as part of its Regulatory Structure Proposal. Questions have arisen about the application of the current description of secured real estate loan both in the context of asset classification and the making of real estate loans in foreign countries. The OTS seeks comment on

whether the current definition of secured real estate loan has provided adequate guidance for savings associations and how it could be clarified or updated.

Paragraph (d) of § 545.32 addresses loan-to-value ratios and duplicates more comprehensive interagency real estate lending standards.¹⁴ Accordingly, the OTS proposes to delete this paragraph.

Section 545.33 Home Loans

The introductory paragraph of § 545.33 generally describes home loans. The OTS is considering moving this paragraph to a new definitional section of the regulations as part of the Regulatory Structure Proposal.

Paragraph (a) describes the authority of savings associations to amortize home loans. The OTS proposes to delete this paragraph for the reasons discussed under § 545.32(b)(3)–(6).

Paragraph (b) addresses loan-to-value ratios for home loans. The OTS proposes to delete this paragraph because the interagency real estate lending standards address the same issues in a more comprehensive and current manner.

Paragraph (c) sets forth limitations on the adjustments that may be made to residential mortgages. Paragraph (c) requires that adjustments to rates, payments, or loan balances be tied to a national or regional index outside the control of the savings association or a formula or schedule set forth in the loan contract. Loans must also comply with the notice requirements of 12 CFR 563.99, which address disclosure requirements for fixed-rate and adjustable-rate mortgage (ARM) loans made by all savings associations.

The OTS proposes to delete paragraph (c).¹⁵ Because § 563.99 would remain in place, savings associations would still be required to provide full disclosure regarding adjustments in rates, payments, and loan balances. However, the substantive restrictions on how these adjustments can be made that now appear in § 545.33(c) would be eliminated. These limitations are much more detailed than those required of other institutions offering mortgages. When these adjustment limitations were last substantially revised, in 1983, ARMs were still relatively new in the marketplace. Consumers did not have a wide range of choices of lenders offering this type of loan. Today, consumers are much more familiar with this type of loan and have a wide variety of possible

¹⁴ 12 CFR 563.100–563.101.

¹⁵ The last sentence in paragraph (c)(5) concerns a federal thrift's right to call a loan due and payable under certain circumstances. OTS proposes to incorporate this provision into new § 560.2.

¹⁰ 12 CFR 545.2.

¹¹ The question of whether regulatory definitions should all be moved into a centralized location in the regulations or instead be located in or near the sections to which they relate will be addressed in a subsequent proposal regarding the structure and organization of OTS regulations ("Regulatory Structure Proposal"). We anticipate that any changes proposed in the Regulatory Structure Proposal will be made final at the same time any changes proposed today are made final.

¹² 12 U.S.C. 1464 (c)(1)(B), (c)(2)(B).

¹³ 12 U.S.C. 1464 (c)(1)(B), (c)(2)(D).

sources for obtaining home mortgages. The OTS believes that as long as information about adjustments to interest rates, term, payments, and loan balances is clearly disclosed to purchasers, the details should be a matter of contract between the savings association and the purchaser. The agency specifically solicits comments about whether any of the provisions in § 545.33(c) should be retained.

Among the provisions that would be removed is the requirement that an ARM's interest rate adjustment be tied to an external index. Some federal savings associations have argued that this external control provision puts savings associations at a competitive disadvantage in the current ARM market and inhibits their ability to manage their assets. Generally federal savings associations, national banks¹⁶, and those housing creditors who elect to operate under the Alternative Mortgage Parity Act¹⁷ are subject to this requirement. The OTS solicits comment on whether it should retain this requirement or, alternatively, a requirement of a national or regional index. The OTS also solicits comment on how federal thrifts might structure their ARM lending programs to ensure that consumers are protected if adjustments are not tied to an external index.

Paragraph (d) of § 545.33 addresses loans on cooperatives. The OTS proposes to delete this paragraph. The interagency real estate lending standards address the same issues as paragraph (d)(1) in a more comprehensive and flexible manner. No comparable reserve requirement to that set forth in paragraph (d)(1) exists for state-chartered thrifts. The OTS solicits comment on whether the provisions of (d)(2), which set forth what may constitute security for such a loan, should be included in guidance.

Paragraph (e) addresses loans to facilitate trade-in or exchange. The OTS proposes to delete this paragraph because the interagency real estate lending standards address the same

issues in a more comprehensive and flexible manner.

Paragraph (f) specifies the OTS regulations that state savings associations and certain other state lenders who elect to make loans under the Alternative Mortgage Parity Act must follow. The Alternative Mortgage Parity Act preempts state laws that might otherwise limit certain state creditors' ability to offer ARMs if they comply with the OTS regulations identified in this paragraph. The agency is concerned that this paragraph is not easy to locate for those affected by it. The OTS therefore proposes to move the provisions of this paragraph, as modified to reflect changes elsewhere in today's proposal, into new § 560.210, as part of a subpart dealing with alternative mortgages, with a title that highlights its content.

Section 545.34 Limitations for Home Loans Secured by Borrower-Occupied Property

Paragraph (a) permits federal savings associations to include due-on-sale clauses in loan instruments to the extent authorized under federal statutes and regulations, regardless of state prohibitions of due-on-sale clauses.¹⁸ The OTS proposes to remove this paragraph and incorporate its provisions into new § 560.2.

Paragraphs (b) and (c) permit federal savings associations to include provisions imposing late fees and prepayment penalties in loan contracts on home loans subject to certain conditions. The OTS proposes to remove these paragraphs and incorporate these limitations, which may provide protection for borrowers, into new § 560.34. The OTS solicits comment on whether these restrictions are important for borrowers.

Section 545.35 Other Real Estate Loans

Section 545.35 sets forth federal savings associations' authority to lend and invest in nonresidential real estate subject to certain statutory and regulatory limitations. Paragraph (a) requires compliance with real estate lending standards. Paragraph (b) reiterates the statutory limit of 400 percent of an association's total capital imposed on investments in nonresidential real estate. The OTS proposes to delete this section, incorporate the reference to federal savings associations' statutory authority to invest in nonresidential real estate loans into the proposed lending and investment powers chart, and place the

limitations into an accompanying endnote.

Section 545.36 Loans To Acquire or To Improve Real Estate

Section 545.36 sets forth regulatory investment limitations pertaining to acquisition, development, and construction loans. The OTS proposes to delete this section inasmuch as the interagency real estate lending standards and interagency safety and soundness standards address the same issues in a more comprehensive and current manner. Paragraphs (c) and (d) of § 545.36 would be incorporated into the Thrift Activities Handbook to provide additional guidance to thrifts making development loans beyond that contained in the interagency real estate lending standards.

Section 545.37 Combination Loans

Section 545.37 allows thrifts to combine loans authorized by part 545. The OTS proposes to delete this section as unnecessary and vague.

Section 545.38 Insured and Guaranteed Loans

Paragraphs (a) and (b) of § 545.38 authorize Federal thrifts to make insured and guaranteed residential real estate loans, notwithstanding other provisions of part 545 but subject to certain conditions. The OTS proposes to delete these paragraphs as unnecessary. Federal savings associations may make an unlimited percentage of residential real estate loans, subject to the interagency real estate lending standards. Other regulatory restrictions affecting such loans have either already been removed from part 545 or are proposed for deletion today.

Paragraph (c) addresses nonresidential real estate loans that are guaranteed by the Economic Development Administration, the Farmers Home Administration, or the Small Business Administration. The OTS proposes to delete this paragraph and incorporate the HOLA's statutory grant of authority for Federal thrifts to make guaranteed nonresidential real estate loans in the endnotes to the proposed lending and investment powers chart.

Section 545.39 Loans Guaranteed Under the Foreign Assistance Act of 1961

This section reiterates the HOLA's statutory grant of authority¹⁹ to Federal thrifts to make loans guaranteed under the Foreign Assistance Act (FAA).²⁰ The

¹⁶ 12 CFR 34.7. The Office of the Comptroller of the Currency has recently proposed amendments to its real estate lending regulations that would not amend this requirement. The preamble to the proposal did not explain why OCC proposes to retain this requirement. See 60 FR 35353, 35355-35356 (July 7, 1995).

¹⁷ The Alternative Mortgage Parity Act, Pub. L. 97-320, Title VII, authorizes certain housing creditors to make alternative mortgage transactions notwithstanding any contrary state law under certain conditions. Among the conditions that housing creditors that rely on the Parity Act and are not commercial banks or credit unions must satisfy is compliance with applicable OTS regulations on ARMs, which include this paragraph. See 12 CFR 545.33(f).

¹⁸ 12 U.S.C. 1701j-3, 12 CFR Part 591.

¹⁹ 12 U.S.C. 1464(c)(4)(C).

²⁰ 22 U.S.C. 2181, 2184.

OTS proposes to delete this section and incorporate its provisions into the proposed lending powers and investment chart and endnotes and new § 560.43. The OTS solicits comment on whether thrifts have invested in or made loans guaranteed under the FAA.

Section 545.40 Loans on Low-Rent Housing

Section 545.40 exempts loans made pursuant to certain low rent housing programs of the Department of Housing and Urban Development from regulatory maximum loan term and loan-to-value limitations. The OTS proposes to delete this section as unnecessary because the loan term and loan-to-value ratio limitations referred to in this section have already been or are now being removed from OTS regulations. By deleting this section, the OTS does not intend to limit Federal thrifts' authority to make low-rent housing loans pursuant to applicable statutory and regulatory provisions, but rather to remove obsolete restrictions that only serve to confuse CFR users.

Section 545.41 Community Development Loans and Investments

Section 545.41 reiterates the HOLA's statutory grant of authority to Federal savings associations to make direct community development loans and investments, subject to an overall 5 percent of assets limitation.²¹ The OTS proposes to delete this section and incorporate the statutory authority reference into the proposed lending and investment powers chart. The chart will separately list the sublimit of 2 percent of assets for equity investments in community development real estate under this authority.

Section 545.42 Home Improvement Loans

Section 545.42 reiterates the HOLA's statutory grant of authority to Federal thrifts to make home improvement loans subject to prudent lending standards.²² The OTS proposes to delete this section and incorporate the reference to Federal thrifts' statutory authority to make home improvement loans into the proposed lending and investment powers chart.

Section 545.43 State Housing Corporation Investment-Insured

Section 545.43 reiterates the HOLA's grant of statutory authority to Federal thrifts to invest in State housing corporation loans²³ subject to a regulatory 30 percent of assets

limitation. This section also duplicates restrictions in current § 563.95, which regulates investment in State housing corporations for all savings associations.²⁴ The OTS proposes to delete § 545.43 and incorporate the reference to the HOLA's statutory grant of authority to Federal thrifts to invest in State housing corporation loans into the proposed lending and investment powers chart.

Section 545.44 Mortgage Transactions With the Federal Home Loan Mortgage Corporation

Section 545.44 provides, in accordance with HOLA § 5(c)(1)(E) and the Federal Home Loan Mortgage Corporation (FHLMC) Act, that Federal thrifts may enter into or perform mortgage transactions with the FHLMC. It does not impose any additional regulatory restrictions, nor does it currently exempt these transactions from any regulatory restrictions. The OTS proposes to delete this section as an unnecessary reiteration of statutory authority and savings associations' inherent power to enter into business contracts. The OTS also solicits comments on whether the OTS should incorporate the definition of "mortgage" set forth in § 302 of the FHLMC Act, currently cross-referenced in this section, in a general definitional section as part of its Regulatory Structure Proposal.

Section 545.45 Manufactured Home Financing

Paragraph (a) of § 545.45 contains several definitions relating to manufactured home financing. The proposed disposition of this section will render these definitions unnecessary and, therefore, the OTS proposes to delete this paragraph.

Paragraph (b) of § 545.45 reiterates the HOLA's statutory grant of authority to federal thrifts to invest in or make manufactured home loans.²⁵ The OTS proposes to delete this paragraph and incorporate the statutory reference to federal thrifts' authority to invest in manufactured home loans into the proposed lending and investment powers chart.

Paragraphs (c) and (d) of § 545.45 address inventory financing and retail financing for manufactured home chattel paper and establish term and loan to value limits for such loans. The OTS believes these paragraphs describe underwriting standards for manufactured homes that are more

suitable as guidance and proposes to transfer these paragraphs to the Thrift Activities Handbook. The OTS solicits comment as to whether these paragraphs provide useful guidance to savings associations.²⁶

Paragraph (e) provides that a federal thrift's sale of manufactured home chattel paper must be sold without recourse. Since it was adopted, the OTS has adopted a capital regulation that requires thrifts to hold appropriate levels of capital against all sales with recourse.²⁷ The OTS therefore proposes to delete this paragraph.

Section 545.46 Commercial Loans

Paragraph (a) of § 545.46 reiterates the HOLA's grant of statutory authority to federal thrifts to invest in and make commercial loans not to exceed 10 percent of their assets.²⁸ The OTS proposes to delete this paragraph and incorporate the authority and statutory limitation in paragraph (a) into the proposed lending and investment powers chart.

The agency is also proposing to delete paragraph (b). This paragraph defines commercial loans to include commercial overdrafts related to demand accounts and commercial unsecured loans by service corporations. Paragraph (b)(1) (commercial overdrafts) will be incorporated into an endnote to the lending and investment powers chart. Thus, commercial overdrafts will continue to be subject to the commercial lending limit.

As for commercial loans made at the service corporation level, however, the agency has determined that the statutory maximum 3 percent of assets that federal savings associations may invest in service corporations generally provides a sufficient safeguard for the savings association, as it does for all other types of activities conducted in service corporations. Under the current service corporation regulation, only a service corporation's commercial loans are aggregated with its parent's loans for purposes of statutory percentage-of-assets limitations on general investment

²⁶ One commenter on the agency's August 28, 1995 proposal to remove unnecessary provisions from its regulations suggested the removal of the provisions in paragraphs (d)(2)(ii)(chattel paper must generally be payable within 20 years in substantially equal payments) and (iii)(the financed amount may not exceed certain loan to value ratios), claiming that they imposed a competitive disadvantage for federal savings associations.

²⁷ See 12 CFR 567.1(kk), 567.6(a)(2)(i)(C).

²⁸ 12 U.S.C. 1464(c)(2)(A). The language in § 545.46(a) regarding pre-1984 investment limits is obsolete and will be deleted.

²¹ See 12 U.S.C. 1464(c)(3)(B).

²² 12 U.S.C. 1464(c)(1)(I).

²³ 12 U.S.C. 1464(c)(1)(P).

²⁴ Section 563.95, as discussed later, is proposed to be modified and moved into new Part 560.

²⁵ 12 U.S.C. 1464(c)(1)(I).

authority.²⁹ Other service corporation investments are not. The agency believes such a distinction is no longer warranted and that such loans should no longer be subject to the statutory 10 percent of assets limitation on commercial lending set forth in HOLA section 5(c)(2)(A).

By removing these loans from the definition of commercial loans, federal savings associations' limited authority to make commercial loans will be somewhat enhanced, benefiting both thrifts and their customers, without endangering safety and soundness or thrifts' primary mission of providing mortgage lending.

Section 545.47 Overdraft Loans

Section 545.47 reiterates the HOLA's statutory grant of authority to federal thrifts to make loans specifically related to transaction accounts, which includes overdraft loans.³⁰ The OTS proposes to delete this section and incorporate the reference to federal thrifts' statutory authority to make overdraft loans into the proposed lending and investment powers chart.

The endnote accompanying this provision will specify that commercial overdraft loans formerly covered by § 545.46 remain subject to the same commercial lending limits.

Section 545.48 Letters of Credit

Section 545.48 authorizes federal thrifts to issue letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practices for Documentary Credits and subject to certain general standards. As already discussed, the HOLA expressly authorizes federal thrifts to invest in or make commercial loans, and this express authorization to make commercial loans necessarily includes within it the authority to issue letters of credit. For ease of reference, the OTS proposes to reference the authority of federal thrifts to issue letters of credit in the proposed lending and investment powers chart.

The OTS believes it would be useful to establish general standards for the issuance of letters of credit for all savings associations. The OTS therefore also proposes to incorporate the substance of § 545.48(a), modified to include a broader range of permissible

letters of credit, into new § 560.120 as prudent lending standards for the issuance of letters of credit. The OTS believes, and industry representatives at the focus group meeting concurred, that many states have already incorporated similar standards and that most associations already have such prudent practices in place.

The OTS solicits comment on whether transferring the substance of § 545.48(a) to the new part 560 would provide needed uniform standards for all savings associations, the benefits of which would outweigh any additional burden on state-chartered savings associations. Alternatively, the OTS invites comment on whether § 545.48(a) should be transferred to handbook guidance.

The OTS proposes to delete paragraph (b) of § 545.48, which addresses the treatment of funds advanced under a letter of credit without compensation from the account party, because it duplicates § 545.31(b), which the OTS proposes to incorporate into new § 560.31(a).

Section 545.49 Loans on Securities

Section 545.49 reiterates the HOLA's statutory grant of authority to federal thrifts to invest in loans to financial institutions and brokers secured by obligations backed by the United States government or certain agencies or instrumentalities thereof.³¹ The OTS proposes to delete this section and incorporate a reference to thrifts' statutory authority to invest in such loans secured by U.S. government or agency backed obligations into the proposed lending and investment powers chart. The introductory paragraph that limits permissible investments in agencies or instrumentalities of the United States to those entities named in § 566.1(g)(3) is being removed as unnecessary.

Section 545.50 Consumer Loans

Section 545.50 reiterates the HOLA's statutory grant of authority to federal thrifts to make consumer loans subject to a 35 percent of assets limit.³² For purposes of determining compliance with this limit, federal thrifts must aggregate their consumer loans with any investments in corporate debt securities and commercial paper.³³ In other words, a federal thrift's aggregate investments in consumer loans, corporate debt securities, and commercial paper may not exceed 35 percent of its assets.

The OTS proposes to delete § 545.50 and to incorporate the reference to federal thrifts' statutory authority to make consumer loans, subject to the statutory asset limit, into the proposed lending and investment powers chart. The OTS plans to include an endnote incorporating the provisions of § 545.50(c), which addresses loans to dealers in consumer goods. The OTS is considering moving paragraph (b) of § 545.50, which defines consumer loans, to a consolidated definitional location in the regulations as part of its Regulatory Structure Proposal. The OTS solicits comment on how the definition of consumer loan can be clarified for categorization purposes and coordinated with other OTS regulations that address consumer credit.³⁴ The current definition of consumer loan that appears in § 545.50(b) expressly excludes credit cards. As a result, under current regulations, credit card loans are not subject to the 35 percent of assets investment limit applicable to consumer loans, corporate debt securities, and commercial paper. A separate regulation, § 545.51 (discussed below), governs the credit card activity of federal savings associations. No percentage of assets limits are imposed on credit cards by that regulation.

This approach mirrors the HOLA. The statutory provision authorizing federal thrifts to invest in consumer loans, corporate debt securities, and commercial paper subject to a 35 percent of assets limit is separate from the statutory provision that authorizes them to invest in credit cards. The statutory provision authorizing credit cards contains no percentage of assets limit.

The OTS has reviewed the legislative history of the two statutory provisions. The legislative history does not provide clear guidance regarding whether any linkage was intended. Thus, under normal rules of statutory interpretation, the plain language of the statute would ordinarily be given effect. As indicated above, the plain language imposes no percentage of assets limit on credit card operations. This does not mean that federal thrifts can make unlimited credit card loans, however. Independent of the investment authorizations in HOLA section 5, all savings associations are required to meet the qualified thrift lender test.³⁵ Credit card loans count as qualified thrift investments only to a very limited extent. The qualified thrift

²⁹ 12 CFR 545.74(c)(1)(1995). For purposes of some other regulations, such as loans to one borrower (12 CFR 563.99) and transactions with affiliates (12 CFR 563.41 and 563.42), investments at the service corporation level are aggregated with investments of the parent savings association. Today's proposal does not affect those regulatory provisions.

³⁰ 12 U.S.C. 1464(c)(1)(A).

³¹ 12 U.S.C. 1464(c)(1)(C), (D), (E), (F).

³² 12 U.S.C. 1464(c)(2)(D).

³³ Id.

³⁴ Compare 12 CFR 545.50(b)'s definition of consumer loan, which excludes credit extended in connection with credit cards, with 12 CFR 561.12, which defines consumer credit for purposes of the regulations in part 563 to include credit cards.

³⁵ 12 U.S.C. 1467a(m).

lender test effectively requires all savings associations to hold a substantial amount of residential mortgage-related assets.

The proposed rule carries forward the pattern of OTS's existing regulations. Under the proposed rule, credit card loans would not be subjected to the 35 percent of assets limit. The OTS solicits comment, however, regarding whether this is the proper approach.

Section 545.51 Credit Cards

As discussed above, § 545.51(a) reiterates the HOLA's grant of statutory authority to federal thrifts to issue credit cards and extend credit in connection therewith, and otherwise engage in credit card operations.³⁶ The OTS proposes to delete this section and incorporate a reference to federal savings associations' statutory authority to engage in credit card operations into the proposed lending/investment powers chart. Consistent with the current form of § 545.51(a), credit card operations would not be subject to the 35 percent of assets limit.

Paragraph (b), addressing the confidentiality of personal security identifiers in conjunction with credit card operations, would be deleted as redundant with the provisions of the Electronic Funds Transfer Act and Regulation E.³⁷

Section 545.52 Loans on Savings Accounts

Section 545.52 reiterates the HOLA's statutory grant of authority to federal thrifts to make loans on the security of savings accounts and sets forth a regulatory limitation on such loans.³⁸ The OTS proposes to delete this section and incorporate the reference to federal thrifts' statutory authority to make loans on savings accounts into the proposed lending and investment powers chart. The limitation on loans on savings accounts to the withdrawal amount of the savings account set forth in paragraph (b) will be retained as an endnote.

Section 545.53 Finance Leasing

This section authorizes federal thrifts to engage in various leasing activities that are the functional equivalent of lending, subject to certain regulatory limitations.³⁹ The OTS proposes to reference federal thrifts' finance leasing

authority with applicable limitations in the proposed lending and investment powers chart.

The OTS is also proposing to consolidate the finance leasing requirements of this section with the general leasing requirements of § 545.78 into one streamlined section, new § 560.41. As part of this consolidation and streamlining, OTS proposes to delete the term limits in paragraph (c)(2) of § 545.53. Institutions should be free to establish their own term limits based on prudent underwriting criteria and market conditions. OTS proposes to amend the residual value requirement for finance leases in current § 545.53(c)(2). The current rule states that no more than 20 percent of the return may be realized from the residual value of the property. Commenters have stated that this language is confusing and that the 20 percent requirement is too strict in light of the fact that the Office of the Comptroller of the Currency (OCC) allows national banks to make leases with a residual value of 25 percent of the original cost of the property to the lessor. Therefore, OTS proposes to amend its residual value requirement for finance leases, to clarify the language and to incorporate the 25 percent standard.⁴⁰

The OTS solicits comment on whether it should consolidate the salvage powers described in this section and in the service corporation regulations into one new section that will outline salvage powers on all types of loans and investments.

Section 545.72 Government Obligations

Section 545.72 reiterates the HOLA's grant of statutory authority to federal thrifts to invest in obligations of any state, territory, or political subdivision thereof.⁴¹ The OTS proposes to delete this section and incorporate the reference to federal thrifts' statutory authority to invest in government obligations into the proposed lending and investment powers chart. The provisions of § 545.72(a) regarding investments in obligations meeting investment grade requirements will be incorporated into new § 560.42 and noted in the endnotes to the chart.

Other provisions of § 545.72 will also be modified and incorporated into new § 560.42. In order to encourage additional safe and sound community-related investments under this provision, the agency is proposing to

modify the regulatory restrictions currently contained in § 545.72(b) for unrated government obligations before incorporating them into the new section.

First, the agency is clarifying that the 1 percent of assets limitation for investments in obligations of a state or political subdivision where a savings association has its home or a branch office that do not meet the rating or full faith and credit requirements of § 545.72(a) is an aggregate limit. However, the OTS is proposing to allow savings associations to invest additional amounts in such obligations, without geographic restrictions, if the obligation is approved for investment by the OTS. This will allow savings associations additional flexibility while allowing the agency the opportunity to monitor the potential riskiness of such investments.

The OTS is also proposing to remove the restriction on gold-related obligations contained in paragraph (c) as obsolete.⁴²

Section 545.73 Inter-American Savings and Loan Bank

Section 545.73 reiterates federal savings associations' statutory authority to invest in the share capital and capital reserve of the Inter-American Savings and Loan Bank, subject to statutory and regulatory limitations on the amount of the investment.⁴³ The OTS proposes to remove this section and incorporate this authority and limitations into the new lending and investment powers chart, endnotes and new § 560.43, which addresses foreign assistance investments. As with investments authorized under the Foreign Assistance Act, discussed earlier under § 545.39, the OTS solicits comment on the extent to which federal savings associations have utilized this authority.

Section 545.74 Service Corporations

The OTS proposes, as discussed under § 545.46 above, to no longer aggregate commercial loans made by a savings association's service corporation with such loans made by the savings association itself for purposes of the statutory 10 percent of assets limitation. The agency proposes a conforming change to § 545.74(c)(1)(vi), where this regulatory aggregation is repeated. The remaining provisions of § 545.74 are under separate review as part of the agency's reinvention of its subsidiaries regulations.

³⁶ 12 U.S.C. 1464(b)(4).

³⁷ See 15 U.S.C. 1693 *et seq.* and 12 CFR part 205 respectively.

³⁸ 12 U.S.C. 1464(c)(1)(A).

³⁹ Section 545.53 cites several HOLA lending provisions, 12 U.S.C. 1464(c)(1)(B), (c)(2)(A), and (c)(2)(D), as the basis for federal thrifts' leasing authority.

⁴⁰ The OCC has recently proposed amendments to its leasing regulation at 60 FR 46246 (September 6, 1995).

⁴¹ 12 U.S.C. 1464(c)(1)(H).

⁴² See 57 FR 40352 (September 3, 1992).

⁴³ 12 U.S.C. 1464(c)(4)(C).

Section 545.75 Commercial Paper and Corporate Debt Securities

Section 545.75(a) reiterates the HOLA's grant of statutory authority to federal thrifts to invest in commercial paper and corporate debt securities.⁴⁴ The OTS proposes to delete this paragraph and to reference federal thrifts' statutory authority to invest in commercial paper and corporate debt securities in the proposed lending and investment powers chart. The agency proposes to retain the limitations on these investments contained in paragraphs (b) and (c) and to move them into a new § 560.40 on commercial paper and corporate debt securities in part 560. The agency solicits comment on whether these provisions should, alternatively, be removed from the regulations and incorporated as guidance in the Thrift Activities Handbook.

The agency proposes to delete paragraph (d) as no longer having any practical application for thrifts in light of section 28(d) of the Federal Deposit Insurance Act. Paragraph (d) authorizes a Federal savings association to invest in commercial paper and corporate debt securities not meeting the rating and marketability requirements of paragraphs (b) and (c), so long as such investments are not otherwise prohibited by section 28(d) of the FDIA, which prohibits investments in junk bonds. The OTS solicits comment as to whether there is any scenario under which paragraph (d) is still relevant.

Section 545.78 Leasing

Section 545.78(a) reiterates the HOLA's grant of statutory authority to federal thrifts to invest in tangible personal property for leasing purposes.⁴⁵ The OTS proposes to incorporate this statutory authority reference into the proposed lending and investment powers chart. The OTS also proposes to delete paragraph (b) of § 545.78, which imposes a maximum 70 percent residual value limit for general leasing activities, because the OTS believes that such an underwriting restriction may be unduly restrictive if applied in all cases. Such lease underwriting considerations are more appropriately addressed in the Thrift Activities Handbook as guidance. As discussed under § 545.53 earlier, new part 560 will contain a § 560.41 addressing both finance leasing and general leasing authority.

⁴⁴ 12 U.S.C. 1464(c)(2)(D).

⁴⁵ 12 U.S.C. 1464(c)(2)(C).

Part 556 Statements of Policy

Section 556.2 Power To Engage In Escrow Business

Section 556.2 addresses federal thrifts' power to engage in the escrow business. The OTS proposes to delete this policy statement. As already discussed with regard to § 545.32(b)(6), the OTS believes that the authority to establish escrow accounts is subsumed within the authority of federal savings associations to make loans and does not need to be specifically identified in the CFR.

Section 556.3 Real Estate

Section 556.3(a) addresses the treatment of motels as either improved nonresidential real estate or combination home and business property for real estate categorization purposes. The OTS proposes to delete this paragraph and incorporate it into guidance. Section 556.3(b) permits federal thrifts to purchase paving certificates that constitute a lien on property securing an association's loan. The OTS proposes to delete this section and transfer the language of the policy statement to the Thrift Activities Handbook.

Section 556.10 First Liens on Properties Sold by the Secretary of HUD

Section 556.10 reiterates federal thrifts' authority to make mortgage loans insured by the Federal Housing Administration and secured by first liens on improved real estate and discusses the treatment and documentary evidence of such loans after disposal by the Secretary of Housing and Urban Development. The OTS proposes to delete this policy statement and move it to guidance in the Thrift Activities Handbook.

Part 563—Operations (All Savings Associations)

Section 563.95 Investment in State Housing Corporations

Section 563.95 covers investments in or loans to state housing corporations by all savings associations. It imposes certain conditions, including percentage-of-asset limitations, depending on the type of loan or investment and the savings association's capital level. The OTS proposes to modify and update this section and move it into a new § 560.121 in new part 560.

Paragraph (a) deals with loans to, and investments in obligations of, state housing corporations that are secured, directly or indirectly, by first liens on insured improved real estate. The OTS proposes to remove percentage-of-asset

limitations in this paragraph (a). Although in the agency's opinion the existing percentage-of-assets limitations would not affect most savings associations that make this type of investment, removing the limit will allow thrifts to exercise business judgment in determining the amount they wish to invest in such loans and obligations, subject, as always, to overall safety and soundness considerations.

The OTS proposes to update the language in paragraph (b), which covers investments in obligations of state housing corporations that do not fall under paragraph (a), in several ways. First, the agency proposes to remove the outdated limitation based on a thrift's level of "general reserves surplus and undivided profits." Instead, any thrift that is adequately capitalized under 12 CFR Part 565 may make such investments. Second, the OTS proposes to allow investments under paragraph (b) to be made in obligations of state housing corporations located in any state in which the association has its home or a branch office. Third, the OTS proposes to revise the aggregate limit on such investments to equal a thrift's total capital under 12 CFR Part 567 and to move this requirement into a new paragraph (b)(2). Finally, the agency proposes to delete the requirement that a thrift may make no more than 25 percent of its aggregate investment in this type of obligation in the obligations of any one state housing corporation. This requirement effectively requires an institution to invest in four state housing corporations any time it wishes to invest in one.

The agency also proposes to delete existing paragraph (c), which allows thrifts (that otherwise have the legal authority to do so) to make direct equity investments in equity securities of state housing authorities. Federal thrifts currently do not have authority to invest in equity securities of state housing corporations, and section 28 of the FDIA constrains state chartered thrifts from making, or retaining past July 1, 1994, any equity investment not permissible for federal thrifts.⁴⁶ The OTS solicits comment as to whether there is any scenario under which paragraph (c) is still relevant.

The agency proposes to move paragraph (d), substantially unchanged, into new § 560.121 as paragraph (c). This paragraph addresses a thrift's obligation before making an investment

⁴⁶ See 12 U.S.C. 1831e(c), which states that a state chartered savings association "may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association," with a limited exception for service corporation investments.

in a state housing corporation, to obtain the corporation's agreement to make information available to the OTS upon request.

Section 563.97 Loans in Excess of 90 Percent of Value

Section 563.97 authorizes thrifts to make loans on the security of residential real estate with loan-to-value ratios in excess of 90 percent of value, consistent with the interagency real estate lending standards. The OTS proposes to delete this section because the interagency real estate lending standards address the same issues in a more comprehensive manner.

Section 563.99 Fixed-Rate and Adjustable-Rate Mortgage Loan Disclosures, Adjustment Notices, and Interest Rate Caps

Section 563.99 defines fixed and adjustable rate mortgage loans and requires thrifts to make certain disclosures to applicants of adjustable rate mortgage loans. The OTS is considering moving the definitions in paragraph (a) to a consolidated definitional location in the regulations as part of the Regulatory Structure Proposal. The agency also expects ultimately to move this section into new Part 560, Subpart C, "Adjustable Rate Mortgages."

The disclosure requirements of § 563.99 and the Federal Reserve Board's (FRB) Truth in Lending Regulation Z⁴⁷ are substantially parallel except for their coverage of certain types of credit transactions. Pursuant to § 303(b) of the CDRIA, the FRB is required to review its regulations with respect to disclosures pursuant to the TILA with regard to adjustable-rate mortgages in order to simplify the disclosures, if necessary, and make the disclosures more meaningful and comprehensible to consumers.⁴⁸ Accordingly, the OTS will undertake a comprehensive review of § 563.99 in conjunction with the FRB's section 303 review of Regulation Z.

Currently § 563.99 covers all adjustable rate loans with a term of more than one year, secured by property occupied or to be occupied by the borrower. Unlike § 563.99, Regulation Z's coverage is not determined by the nature of the secured property but rather by other criteria, e.g., the extension of credit must be for personal, family, or household purposes.⁴⁹

As the regulations currently interact, certain transactions are encompassed by

§ 563.99 but not by Regulation Z. For example, a savings association that makes a business purpose adjustable rate mortgage loan secured by a home would be subject to the disclosure requirements set forth at § 563.99; however, no disclosures would be required under Regulation Z.⁵⁰ In order to establish parity in coverage with respect to disclosure requirements among lenders, the OTS is today proposing to revise § 563.99 to exclude from that section's coverage adjustable rate loans that are primarily for a business, commercial, or agricultural purposes, consistent with Regulation Z.⁵¹

Section 563.100-101 Real Estate Lending Standards

These sections prescribe real estate lending standards that require all savings associations to adopt and maintain comprehensive written real estate lending policies that are consistent with safe and sound practices and with the Guidelines for Real Estate Lending.⁵² Savings associations' policies must address certain lending considerations including loan-to-value limits, loan administration procedures, portfolio diversification standards, and documentation, approval, and reporting requirements. The OTS is not proposing changes to these sections today, but plans ultimately to redesignate and move them substantially unchanged into a new part 560.

The OTS adopted the real estate lending standards pursuant to an interagency effort mandated by section 304 of the FDICIA.⁵³ Pursuant to Section 303 of the CDRIA, the OTS and the other banking agencies are each to review these standards and to "consider the impact that such standards have on the availability of credit for small business, residential, and agricultural purposes, and on low- and moderate-income communities."⁵⁴ The OTS welcomes comments on the impact that the real estate lending standards, including the Guidelines, are having on the availability of the types of credit and communities described above.

Section 563.160 Classification of Certain Assets

Section 563.160 requires thrifts to classify their own assets and establish

valuation allowances. The OTS proposes to delete this section in its entirety.⁵⁵

Section 563.160 was added in 1987 pursuant to section 402 of CEBA, which amended the HOLA to add a new section 9 requiring that the FHLBB, the OTS's predecessor, adopt regulations establishing an asset classification system. FIRREA removed that section and in turn amended the HOLA to require only that OTS asset classification regulations and policies be no less stringent than the OCC's.⁵⁶ None of the banking agencies, including OCC, has an asset classification regulation. Their asset classification systems are set forth in supervisory guidance.

In order to more closely parallel the asset classification systems of the other federal banking agencies, the OTS believes that § 563.160 can be removed without impairing safety and soundness. The existing asset classification system will be placed in the Thrift Activities Handbook.

This change in no way relieves thrifts of the responsibility to properly classify their assets and establish prudent valuation allowances as necessary. Nor does it reduce the OTS's statutory supervisory authority to require associations to classify their assets and establish valuation allowances based on examination findings.

Section 563.170 Examinations and Audits; Appraisals; Establishment and Maintenance of Records

Paragraph (a) of § 563.170 authorizes the OTS to examine thrifts consistent with OTS policies and to annually assess thrifts for the costs of such examinations based on the thrifts' assets. The OTS proposes to retain this paragraph.

Paragraph (b) authorizes the OTS to select appraisers to perform appraisals of real estate in connection with examinations and audits and requires thrifts to pay for such appraisal services. The agency proposes to retain this paragraph.

Paragraph (c) sets forth general record maintenance requirements for savings associations to ensure that examiners have access to an accurate and complete record of all business transacted by the thrift. The OTS proposes to retain this

⁵⁵The OTS has already requested comment on deleting the definitions of "substandard," "doubtful," and "loss" set forth in paragraph (b), and the definition of "Special Mention" assets in paragraph (e) because definitions of those terms are contained in the Thrift Activities Handbook. 58 FR 38730 (July 20, 1993). Commenters supported such deletions. The OTS proposed deleting paragraph (f) as part of its regulatory review proposal of August 28, 1995, and received no unfavorable comments.

⁵⁶See HOLA section 4(c), 12 U.S.C. 1463.

⁵⁰Regulation Z exempts from its disclosure requirements extensions of credit primarily for business, commercial, or agricultural purposes. See 12 CFR 226.3(a)(1).

⁵¹12 CFR 226.3(a).

⁵²Appendix A to the Real estate lending standards at §§ 563.100-563.101.

⁵³See 57 FR 62890 (December 31, 1992).

⁵⁴12 U.S.C. 4803(a)(1)(C).

⁴⁷See 12 CFR 226.19(b), 226.20(c).

⁴⁸12 U.S.C. 4803.

⁴⁹12 CFR 226.1(c)(1)(iv).

general introductory paragraph, with a modification to incorporate language in current paragraph (c)(9) on maintaining records required by other laws or regulations.

Paragraphs (c)(1)–(9) set forth a list of specific loan documents that, at a minimum, thrifts must maintain to comply with § 563.170(c). While the documents listed are generally appropriate and could be used as a checklist for prudent lending, a rigid requirement that all documents be present for each loan is too restrictive and does not necessarily address all safety and soundness concerns. Currently, if an institution is missing any of the documents required by regulation, it is technically in violation of that regulation, even if the safety and soundness intent of the regulation has been satisfied. Conversely, safety and soundness concerns may, in a particular instance, necessitate different or additional documentation beyond those records listed in the regulation.

For example, § 563.170(c)(1)(v) requires either a financial statement or a credit report for all loans, ostensibly to justify the borrower's willingness and ability to repay the loan. However, the ability and willingness of a borrower to repay a consumer or home loan may be better demonstrated with a verification of employment (not currently required) and a satisfactory credit report, rather than a financial statement. For commercial borrowers, verification by the institution that the borrower's financial statements accurately reflect all assets, liabilities, and any other guarantees or encumbrances is more important to the decision to extend credit than the mere presence of a financial statement.

Since FIRREA, several interagency regulations have been developed that include guidelines for proper loan documentation. These underwriting and documentation standards minimize the need for OTS to have a regulation setting specific documentation requirements.

Guidelines appended to the interagency real estate lending standards state that an institution should establish loan administration procedures that address documentation.⁵⁷ The OTS also sets forth loan documentation and credit underwriting requirements in the interagency Standards for Safety and Soundness and Guidelines Establishing Standards for Safety and Soundness to

which all federal insured depository institutions are expected to adhere.⁵⁸

The OTS proposes replacing the specific documentation listed in paragraphs (c)(1)–(9) with more general documentation standards in a new § 560.170 in part 560. These proposed standards are drawn from the interagency guidelines establishing standards for safety and soundness.

Deleting these paragraphs would not only relieve savings associations of documentation requirements that exceed those for banks and other financial institutions but also may enable savings associations to take better advantage of technological marketplace advances such as telephone and computerized home banking. The OTS invites comment as to whether the proposed revisions to loan documentation requirements are sufficiently flexible to accommodate savings associations' participation in telephone and computerized home banking.

The OTS is considering transferring the current document list in paragraphs (c)(1)–(5), (7), to the Thrift Activities Handbook to be used as a checklist of records generally maintained by prudent lenders to support a loan.

Paragraph (c)(10) of § 563.170 exempts certain small business loans from the documentation requirements set forth in paragraphs (c)(1)–(7). The OTS proposes to delete paragraph (c)(10) inasmuch as the revision of paragraphs (c)(1)–(7) eliminates the need for this exemption.

Paragraph (d) of § 563.170 addresses change in location of accounting or control records. Paragraph (e) addresses use of data processing services for maintenance of records. The OTS proposes to retain these paragraphs, but solicits comments on how these paragraphs might be updated to reflect technological changes in record maintenance.

Section 563.172 Re-evaluation of Real Estate Owned

Section 563.172 requires savings associations to appraise all real estate owned (REO) at the earlier of in-substance foreclosure or at the time of acquisition and, thereafter, as dictated by prudent management policy. The OTS is considering deleting this section inasmuch as thrifts can apply the appraisal regulations and general accounting principles (GAAP) to determine when an appraisal may be appropriate or necessary for safety and soundness. If it is retained, this section

would be incorporated into new part 560. The OTS solicits comment on the need for this section and on how the interaction between this section and the appraisal regulations at part 564 might be clarified.

Part 571 Statements of Policy

Section 571.8 Investment in State Housing Corporations

Section 571.8 limits savings associations' investment authority in state housing corporations to certain public and private corporations and agencies. The OTS proposes to delete this policy statement as an unnecessary limitation on the definition of state housing corporation.

Section 571.13 Participation Interests in Pools of Loans

Section 571.13 addresses appropriate documentation for a savings association's purchase of a participation interest in a pool of loans (in the nature of mortgage-backed securities) and indicates that compliance with the documentation requirements of § 563.170 may be impracticable for such transactions. The OTS proposes to delete this section inasmuch as the proposed revision of § 563.170(c) would eliminate the need for this policy statement. The OTS plans to transfer the documentation guidance for purchases of participation interests in pools of loans to the Thrift Activities Handbook.

Section 571.20 Payment for Appraisals

Section 571.20 addresses payment by savings associations for appraisals obtained as part of an OTS examination. The OTS proposes to delete this section and expects to transfer this policy statement to the Thrift Activities Handbook.

Section 571.22 Most Favored Lender Status

Section 571.22 implements section 4(g) of the HOLA, which authorizes savings associations to charge on any extension of credit an interest rate equal to the greater of (a) one percentage point above the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which the savings association is located or (b) the rate allowed by the laws of the State in which the savings association is located. The OTS proposes to move the provisions of this section into new section 560.2 without substantive modification.

However, the OTS requests specific comment on one aspect of § 571.22. Paragraph (b) indicates that any savings association seeking to make loans at the

⁵⁷ See 12 CFR part 563, subpart D, appendix A.

⁵⁸ 12 CFR part 570 and Appendix A thereto, 60 FR 35674 (July 10, 1995).

interest rate authorized for a state most favored lender must also comply with the same "substantive state law requirements" that are applicable to that state lender when making loans of the same type. The OCC, which administers a very similar statutory provision for national banks, uses a slightly different phrase to describe what types of state laws must be complied with pursuant to the most favored lender doctrine. The OCC requires national banks to comply with all state laws that apply to the state most favored lender and are "material to the determination of the interest rate" authorized under state law.⁵⁹ The OTS has previously opined that this standard is essentially the same as the OTS's "substantive law" standard.⁶⁰ Accordingly, when addressing interpretive questions, the OTS has looked to the case law and other precedent interpreting the national bank standard. In order to promote both clarity and parity, the OTS specifically requests comment regarding whether paragraph (b) of § 571.22 should be replaced in its entirety with a reference to state laws that are "material to the determination of the interest rate."

2. New Part 560—Lending and Investment

The OTS proposes to adopt a new part 560, Lending and Investment, that will ultimately include all of the agency's lending and investment regulations except for Appraisals (part 564) and subsidiary-related investments (currently under separate review). The agency believes that this reorganization will make it much easier for those using the agency's regulations to find all relevant lending and investment powers, authorities, and limitations.

Section 560.1 Authority and Scope (Proposed)

This proposed section sets out the basic statutory authority for lending and which regulations in this part will apply only to federal savings associations and which to all savings associations. It also briefly sets forth the agency's expectations that all lending and investment activities are to be conducted prudently, consistent with safety and soundness, with adequate portfolio diversification, and in a manner appropriate for the size of the institution, the nature and scope of its operations, and conditions in its lending market.

Section 560.2 Applicability of Law (Proposed)

This proposed section sets forth the OTS's longstanding position, as developed in caselaw and legal opinions by both the OTS and its predecessor, the FHLBB, and as currently reflected in § 545.2, on the federal preemption of state laws purporting to affect the lending activities of federal savings associations. Because the lending regulations are being moved out of Part 545 and, thus, separated from § 545.2 and because many of the details of the lending regulations that have been cited in preemption opinions are being removed, the OTS proposes to include new § 560.2 to confirm and carry forward its existing preemption position.

As discussed in Section III.A.4., above, lending is one of the core activities in which federal savings associations engage. The OTS believes that Federal preemption of State laws purporting to affect lending is critical to filling the agency's mandate under HOLA sections 4(a) and 5(a) to provide for the safe and sound operation of Federal savings associations in accordance with the best practices of thrift institutions in the United States. Today's proposal, which deals only with preemption in the lending area and does not amend § 545.2, provides general standards drawn from caselaw and legal opinions and the agency's current regulations. The agency is hopeful that the increased clarity and specificity of § 560.2 will reduce confusion and the need for frequent preemption inquiries to OTS.

Subpart A—Lending and Investment Powers for Federal Savings Associations

This subpart will contain lending and investment regulations directly applicable only to federal savings associations.

Section 560.30 General Lending and Investment Powers (Proposed)

Proposed § 560.30 takes the form of a chart that lists many of the lending and investment powers granted to federal thrifts by the HOLA. It is derived from the regulations that currently appear in part 545. An important component of this regulation are the endnotes to the chart that elaborate upon statutory limitations, impose regulatory limitations, or otherwise describe conditions on the exercise of these powers.

Although the chart references many of the more commonly used powers, it does not give a complete listing of all statutory lending and investment

authorities. The OTS solicits comment on whether a chart in this format makes the CFR easier to use. The OTS also invites comment on whether the chart would be more useful if it codified all statutory powers, even those without statutory or regulatory limitations or those rarely used.

Section 560.31 Election Regarding Categorization of Investments and Related Calculations

This proposed section is derived from current § 545.31, incorporating the modifications described earlier under that section.

Section 560.34 Limitations on Home Loans

This proposed section is derived from current § 545.34 (b) and (c).

Section 560.40 Commercial Paper and Corporate Debt Securities

This proposed section is derived from paragraphs (b) and (c) of current § 545.75.

Section 560.41 Leasing

This proposed section is a consolidation and reorganization of current § 545.53 (finance leasing) and § 545.78 (general leasing authority), incorporating the modifications described under those sections.

Section 560.42 State and Local Government Obligations

This proposed section is derived from section 5(c)(1)(H) of the HOLA and paragraphs (a) and (b) of current § 545.72.

Section 560.43 Foreign Assistance Investments

This proposed section is a consolidation and reorganization of current §§ 545.39 and 545.73.

Subpart B—Lending and Investment Provisions Applicable to All Savings Associations

This proposed subpart will contain safety and soundness based lending standards and provisions applicable to all savings associations, including state savings associations, to the extent that they have the authority to make the investments it discusses. The agency expects to move its Real Estate Lending Standards and Guidelines, currently located at 12 CFR 563.100–.101 and Appendix A to Part 563, Subpart D, into this subpart.

Section 560.120 Letters of Credit

This proposed section is derived from current § 545.48 and establishes standards for letters of credit for all savings associations.

⁵⁹ 12 CFR 7.7310.

⁶⁰ OTS Op. Chief Counsel, Oct. 14, 1992.

Section 560.121 Investments in State Housing Corporations

This proposed section is derived from current § 563.95, incorporating the modifications described earlier under that section.

Section 560.170 Records for Lending Transactions

This proposed section will contain general loan documentation requirements based on the interagency safety and soundness standards and guidelines found at 12 CFR Part 570. It will replace the specific loan documentation requirements currently found at 12 CFR 563.170(c) (1)–(10).

Subpart C—Adjustable Rate Mortgages

This proposed subpart will contain new § 560.210, “Alternative Mortgage Parity Act” and will also ultimately include ARM disclosure requirements currently found in § 563.99, with the possible amendments discussed under that section.

Section 560.210 Alternative Mortgage Parity Act

This proposed section is derived from current § 545.33(f), “Notice of housing creditors regarding alternative mortgage transactions.” The OTS has observed that housing creditors interested in engaging in alternative mortgage

transactions could not easily locate this section and believes placing it into a subpart specifically dealing with alternative mortgages will make it more accessible to users. The section has been streamlined and modified to reflect changes proposed today, including the removal of cross-references of provisions proposed for repeal.

IV. Proposed Disposition of Lending- and Investment-Related Regulations

The following chart displays the proposed reorganization of OTS’s existing lending- and investment-related regulations.

Original provision	New provision	Comment
§ 545.31(a)	§ 560.31(a)	Modified; last sentence to be addressed in Regulatory Structure rule-making.
§ 545.31(b)	§ 560.31(a)	Modified; last sentence to be addressed in Regulatory Structure rule-making.
§ 545.31(c),(d)	§ 560.31(b), (c)	Unchanged.
§ 545.32(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.32(b)(1),(2)		Removed.
§ 545.32(b)(3)–(6)		Removed, included as areas in which state law is preempted under § 560.2.
§ 545.32(c)		To be addressed in Regulatory Structure rulemaking.
§ 545.32(d)		Removed.
§ 545.33 Introductory paragraph		To be addressed in Regulatory Structure rulemaking.
§ 545.33(a)–(e)		Removed, included as area in which state law is preempted under § 560.2.
§ 545.33(f)	§ 560.210	Modified.
§ 545.34(a)	§ 560.2	Modified and reorganized.
§ 545.34(b), (c)	§ 560.34	Substantially unchanged.
§ 545.35	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.36		Removed. Paragraphs (c) and (d) to be incorporated into guidance.
§ 545.37		Removed.
§ 545.38(a),(b)		Removed.
§ 545.38(c)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.39(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.39(b)	§ 560.43	Modified.
§ 545.40		Removed.
§ 545.41	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.42	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.43	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.44		Removed.
§ 545.45(a),(b)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.45(c),(d)		To be incorporated into guidance.
§ 545.45(e)		Removed.
§ 545.46(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.46(b) introductory paragraph and (b)(1).	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.46(b)(2)		Removed.
§ 545.47	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.48	§ 560.30	Authority incorporated into lending and investment powers chart.
§ 545.48(a)	§ 560.120	Modified.
§ 545.48(b)		Removed.
§ 545.49	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.50(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.50(b)		To be addressed in Regulatory Structure rulemaking.
§ 545.50(c)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.51(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.51(b)		Removed.
§ 545.52	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.53(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.53(b)–(d)	§ 560.41	Significantly changed.
§ 545.72 Introductory paragraph	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.72(a), (b)	§ 560.42	Significantly changed.
§ 545.72(c)		Removed.
§ 545.73 Introductory paragraph	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.73(a), (b)	§ 560.43	Modified.

Original provision	New provision	Comment
§ 545.74(c)(1)(vi) .....	.....	Removed.
§ 545.75(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.75(b), (c)	§ 560.40	Modified.
§ 545.75(d) .....	.....	Removed.
§ 545.78	§ 560.30. See also 560.41	Significantly changed and incorporated into lending and investment powers chart.
§ 556.2 .....	.....	Removed.
§ 556.3 .....	.....	To be incorporated into guidance.
§ 556.10 .....	.....	To be incorporated into guidance.
§ 563.95	§ 560.121	Significantly changed.
§ 563.97 .....	.....	Removed.
§ 563.99 .....	.....	Modified by adding new paragraph (g).
§ 563.160 .....	.....	Removed.
§ 563.170(a),(b) .....	.....	Unchanged.
§ 563.170(c) .....	.....	Modified.
§ 563.170(c)(1)-(10)	§ 560.170	Significantly changed.
§ 563.170(d),(e) .....	.....	Unchanged.
§ 563.172 .....	.....	Modifications or removal under consideration.
§ 571.8 .....	.....	Removed.
§ 571.13 .....	.....	Removed.
§ 571.20 .....	.....	To be incorporated into guidance.
§ 571.22	§ 560.2	No substantive change.

V. Request for Comment

The OTS invites comment on all aspects of the proposal as well as specific comments on the proposed changes. For the convenience of the reader, specific areas noted for comment earlier in this preamble are repeated under section B., below.

A. General Areas for Comment

The OTS also solicits comments on several broader areas of concern:

(1) What is the best approach for providing clear guidance on the preemptive effect of OTS's lending regulations for federal savings associations?

(2) Could a supervisory approach more dependent on general guidelines and safety and soundness standards lead to differences in interpretation of regulatory requirements and safety and soundness standards? Would these differences result in unnecessary misunderstandings and confrontations between institutions and supervisory staff? What types of communications or training would ease the transition to a supervisory approach more dependent on guidelines?

(3) Are there regulatory or policy barriers in OTS's lending and investment regulations that prevent or otherwise discourage savings associations from investing in community development activities? As discussed above, OTS is proposing to remove unnecessary restrictions from its regulations on investments in government obligations and state housing corporations. The agency seeks comments on other regulatory changes that would encourage safe and sound

community lending that are within its statutory authority.

(4) While savings associations have, and will continue to have, a focus on mortgage lending, it is important that the regulations do not impair their ability to offer other types of loans. A savings association should be able to structure its portfolio of assets to offer the best mix of income-producing products that will meet its community's credit needs consistent with statutory authority. The agency is proposing to remove commercial loans made by service corporations from the overall commercial lending limit, which it believes is consistent with safety and soundness and within its statutory authority. The agency solicits comments on what other regulations affecting federal savings associations' commercial lending, especially small business lending, authority could be modified.

B. Specific Requests for Comment

For the convenience of the reader, the specific points on which the proposal requests comment are repeated below:

(1) Should the regulation contain a chart listing the most commonly used lending and investment powers that would make it easier to locate lending authorities and determine which restrictions apply? Would such a chart be more useful if it included statutory provisions not currently set forth in the regulations?

(2) Today's proposal represents the agency's current best considered judgment about the right balance between which provisions affecting lending should be binding regulations and which should be guidance conveying the OTS's general views on

safety and soundness standards. Does the proposal achieve these goals?

(3) The section-by-section analysis highlights particular lending provisions that the agency is considering modifying or removing in an effort to streamline the lending regulations and remove unnecessary restrictions. Are specific, detailed regulations needed in these areas?

(4) Has the current definition of secured real estate loan provided adequate guidance for savings associations and how could it be clarified or updated?

(5) Should any of the provisions in § 545.33(c), limitations on adjustments to mortgages, be retained?

(6) Should OTS retain the requirement that an index used for an ARM must be outside the institution's control or, alternatively, a requirement of a national or regional index? The OTS also solicits comment on how federal thrifts might structure their ARM lending programs to ensure that consumers are protected if adjustments need not be tied to external indices.

(7) Should the provisions of § 545.33(d)(2), which set forth what may constitute security for a loan on a cooperative, be included in guidance?

(8) Are the restrictions on late fees and prepayment penalties on home loans, currently found in § 545.34(b) and (c) and proposed to be incorporated into new § 560.34, important for borrowers?

(9) Have thrifts invested in or made loans guaranteed under the Foreign Assistance Act?

(10) How can OTS best reference federal thrifts' authority to make low-rent housing loans in the proposed lending and investment powers chart?

(11) Should the definition of "mortgage" set forth in § 302 of the FHLMC Act, currently cross-referenced in § 545.44, be incorporated into a future general definitional section?

(12) Do paragraphs (c) and (d) of § 545.45 on manufactured home financing underwriting standards provide useful guidance to savings associations?

(13) Does transferring the substance of the letters of credit regulation, § 545.48(a), to the new part 560 provide needed uniform standards for the thrift industry, the benefits of which would outweigh any additional burden on state savings associations? Alternatively, should § 545.48(a) be transferred to handbook guidance?

(14) How can the definition of consumer loan be clarified for classification purposes and coordinated with other OTS regulations that define consumer credit differently?

(15) Should the salvage powers described in the leasing regulation (proposed new § 560.41) and in the service corporation regulation (§ 545.74) be consolidated into one new section that will outline salvage powers on all types of loans and investments?

(16) To what extent have savings associations utilized the authority to invest in the Inter-American Savings and Loan Bank?

(17) The agency proposes to retain paragraphs (b) and (c) of current § 545.75 and to move them into a new § 560.40 on commercial paper and corporate debt securities in part 560. Should these provisions, alternatively, be removed from the regulations and incorporated as guidance in the Thrift Activities Handbook?

(18) The agency proposes to delete paragraph (d) of current § 545.75, commercial paper and corporate debt securities, as no longer having any practical application for savings associations in light of section 28(d) of the FDIA. Is there any scenario under which paragraph (d) is still relevant?

(19) Pursuant to 303 of the CDRIA, the OTS and the other banking agencies are each to review these standards and to consider the impact that such standards have on credit availability for small business, residential, and agricultural purposes, and on low- and moderate-income communities. What impact have the interagency real estate lending standards, including the Guidelines, had on the availability of the types of credit and communities described above?

(20) Are the proposed revisions to loan documentation requirements (proposed new § 560.170) sufficiently flexible to accommodate participation in

telephone and computerized home banking?

(21) Paragraph (d) of § 563.170 addresses change in location of accounting or control records. Paragraph (e) addresses use of data processing services for maintenance of records. How can these paragraphs be updated to reflect technological changes in record maintenance?

(22) What is the need for § 563.172, re-evaluation of real estate? How can the interaction between this section and the appraisal regulations at part 564 be clarified?

(23) Should paragraph (b) of § 571.22 (most favored lender) be replaced in its entirety with a reference to state laws that are "material to the determination of the interest rate," in order to clarify the meaning of paragraph (b) and to promote parity between savings associations and national banks?

VI. Paperwork Reduction Act of 1995

The OTS invites comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection, including the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The reporting requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the OTS, 1700 G Street, NW., Washington, DC 20552.

The recordkeeping requirements in this notice of proposed rulemaking are found in 12 CFR 560.170 and 563.170. The recordkeeping requirements set forth in this notice of proposed rulemaking are needed by the OTS in order to supervise savings associations and develop regulatory policy. The

likely recordkeepers are OTS-regulated savings associations.

Estimated number of respondents and/or recordkeepers: 1,460.

Estimated average annual burden hours per recordkeeper: 422 hours.

Estimated total annual reporting and recordkeeping burden: 616,431 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time respondent/recordkeeper owns the loan plus three years.

VII. Executive Order 12866

The Director of the OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

VIII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal does not impose any additional burdens or requirements upon small entities and lowers several paperwork and other burdens on all savings associations.

IX. Unfunded Mandates Act of 1995

The OTS has determined that the requirements of this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 556

Savings associations.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, and under the authority of 12 U.S.C. 1462a, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.31 [Amended]

2. Section 545.31 is amended by removing the first two sentences of paragraph (a), and paragraphs (c) and (d).

§ 545.32 [Amended]

3. Section 545.32 is amended by removing and reserving paragraphs (a), (b), and (d).

§ 545.33 [Amended]

4. Section 545.33 is amended by removing and reserving paragraphs (a) through (f).

§§ 545.34–545.43, 545.45–545.49 [Removed]

5. Sections 545.34 through 545.43 and 545.45 through 545.49 are removed.

§ 545.50 [Amended]

6. Section 545.50 is amended by removing and reserving paragraphs (a) and (c).

§§ 545.51–545.53 [Removed]

7. Sections 545.51 through 545.53 are removed.

§ 545.72–545.73 [Removed]

8. Sections 545.72 through 545.73 are removed.

9. Section 545.74 is amended by revising paragraph (c)(1)(vi) to read as follows:

§ 545.74 Service corporations.

* * * * *

(c) * * *

(1) * * *

(vi) Commercial loans and participations therein.

* * * * *

§ 545.75 [Removed]

10. Section 545.75 is removed.

§ 545.78 [Removed]

11. Section 545.78 is removed.

PART 556—STATEMENTS OF POLICY

12. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§§ 556.2, 556.3, 556.10 [Removed]

13. Sections 556.2, 556.3, and 556.10 are removed.

14. Part 560 is added to read as follows:

PART 560—LENDING AND INVESTMENT

Sec.

560.1 General.

560.2 Applicability of law.

Subpart A—Lending and Investment Powers for Federal Savings Associations

560.30 General lending and investment powers for Federal savings associations.

560.31 Election regarding categorization of loans or investments and related calculations.

560.34 Limitations on home loans.

560.40 Commercial paper and corporate debt securities.

560.41 Leasing.

560.42 State and local government obligations.

560.43 Foreign assistance investments.

Subpart B—Lending and Investment Provisions Applicable to All Savings Associations

560.120 Letters of credit.

560.121 Investment in state housing corporations.

560.170 Records for lending transactions.

Subpart C—Adjustable Rate Mortgages

560.210 Alternative Mortgage Parity Act.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828, 1701j–3, 3803, 3806; 42 U.S.C. 4106.

§ 560.1 General.

(a) *Authority and scope.* This part is being issued by the OTS under its general rulemaking and supervisory authority under the Home Owners' Loan Act, 12 U.S.C. 1462 *et seq.* Subpart A of this part sets forth the lending and investment powers and authority of Federal savings associations. Subpart B of this part contains safety-and-soundness based lending and investment provisions applicable to all savings associations. Subpart C of this part deals with adjustable-rate mortgages.

(b) *General lending standards.* Each savings association is expected to conduct its lending and investment activities prudently. Each association should use lending and investment standards that are consistent with safety and soundness and ensure adequate portfolio diversification and are appropriate for the size and condition of

the institution, the nature and scope of its operations, and conditions in its lending market. Each association should adequately monitor its portfolio and collateral.

§ 560.2 Applicability of law.

(a) *General standards.* In considering whether State laws apply to the lending and investment activities of Federal savings associations, the OTS will apply generally recognized principles of Federal preemption of state law. For purposes of this part, "State law" includes any State statute, regulation, ruling, order or judicial decision. The OTS intends to occupy the entire field of lending regulation for Federal savings associations. For purposes of clarity, paragraphs (b) and (d) of this section set forth specific areas in which State laws are expressly preempted as they purport to affect lending by Federal savings associations and any limitations on such preemption. Paragraph (c) of this section sets forth the specific areas in which state laws that may have an effect on lending are not preempted by Federal law.

(b) *Express preemption.* Federal savings associations may make all loans and investments authorized under federal law, including this part, without regard to limitations in state law purporting to regulate such activities, including, without limitation, laws governing:

(1) Licensing, registration and filings and reports;

(2) Loan to value ratios;

(3) Amortization of loans, including the deferral and capitalization of interest;

(4) Adjustments to the interest rate, payment, balance, or term to maturity of the loan, including calling a loan due and payable upon the passage of a number of years since closing or a specified event external to the loan;

(5) Loan-related fees, including without limitation, initial charges, late charges, and prepayment penalties;

(6) Escrow accounts;

(7) Security property, including leaseholds;

(8) Disclosure requirements and access to credit reports;

(9) Requirements on disbursements and repayments;

(10) Mortgage processing;

(11) Usury and interest rate ceilings to the extent provided in 12 U.S.C. 1735f–7(a) and part 590 of this chapter and 12 U.S.C. 1463(g) and paragraph (d) of this § 560.2; and

(12) Due-on-sale clauses to the extent provided in 12 U.S.C. 1701j–3 and part 591 of this chapter.

(c) *State laws that are not preempted.* Notwithstanding paragraph (b) of this

section, state laws in the following areas are not preempted as they affect the lending operations of Federal savings associations:

- (1) General contract law;
- (2) General real property law;
- (3) Homestead laws specified in 12 U.S.C. 1462a(f);
- (4) Tort law; and
- (5) Criminal law.
- (d) *Most favored lender.* (1) Under 12 U.S.C. 1463(g), savings associations are authorized to charge interest at a rate not to exceed the greater of either one percent above the Federal Reserve ninety-day discount rate or the rate allowed to the most favored lender on the particular class of loans under State law whenever the greater of either of these rates exceeds the rate the association is permitted to charge by State law.
- (2) Savings associations may only charge the preferential rates reserved for

most favored lenders when they are making the same type of loans as the most favored lender. Accordingly, savings associations may not charge the maximum loan rates permitted for small loan companies unless that loan meets the substantive state law requirements as to loan term amount, use of proceeds, identity of borrower, and so forth. Consumer protections specifically required in such loans when made by the most favored lender are also to be considered substantive and must be included in loans made by savings associations that desire to use most-favored-lender rates.

(3) Federal savings associations are not required to submit to state most-favored-lender restrictions that are primarily procedural or regulatory in nature. Such restrictions include licensing, bonding, and reporting to State authorities. The degree to which state-chartered savings associations

must comply with such restrictions will be determined by their State supervisors.

Subpart A—Lending and Investment Powers for Federal Savings Associations

§ 560.30 General lending and investment powers for Federal savings associations.

Pursuant to section 5(c) of the Home Owners Loan Act (HOLA), 12 U.S.C. 1464(c), a federal savings association may make, invest in, purchase, sell, participate in, or otherwise deal in (including brokerage or warehousing) all loans and investments allowed under section 5(c) of the HOLA including, without limitation, the following loans, extensions of credit, and investments, subject to the limitations indicated and any such terms, conditions, or limitations as may be prescribed from time to time by the Office by policy directive, order, or regulation:

LENDING AND INVESTMENT POWERS CHART

Category	HOLA authorization	Statutory percentage of assets limitations (endnotes contain applicable regulatory limitations)
Commercial loans	5(c)(2)(A)	10% of total assets.
Commercial paper and corporate debt securities.	5(c)(2)(D)	Up to 30% of total assets. ^{1,2}
Community development	5(c)(3)(B)	5% of total assets.
Community development direct investments	5(c)(3)(B)	2% of total assets. ³
Consumer loans	5(c)(2)(D)	Up to 35% of total assets. ^{1,4}
Credit cards	5(b)(4)	None. ⁵
Education loans	5(c)(3)(A)	5% of total assets.
Finance leasing	5(c)(1)(B)	Based on collateral type for property financed. ⁶
	5(c)(2)(A)	
	5(c)(2)(D)	
Foreign assistance investments	5(c)(4)(C)	1% of total assets. ⁷
General leasing	5(c)(2)(C)	10% of assets. ⁶
Home improvement loans	5(c)(1)(J)	None. ⁵
Home (residential) loans ⁸	5(c)(1)(B)	None. ^{5, 9}
Letters of credit	5(c)(2)(A)	Included in aggregate 10% of assets commercial lending limitation. ¹⁰
Loans secured by accounts	5(c)(1)(A)	None. ^{5, 11}
Loans to financial institutions, brokers, and dealers.	5(c)(1)(H)	None. ^{5, 12}
Manufactured home loans	5(c)(1)(J)	None. ^{5, 13}
Nonresidential real property loans	5(c)(2)(B)	400% of total capital. ¹⁴
State and local government obligations	5(c)(1)(H)	None. ^{5, 15}
State housing corporations	5(c)(1)(P)	None. ^{5, 16}
Transaction account loans, including overdrafts.	5(c)(1)(A)	None. ^{5,17}

NOTES:

¹ For purposes of determining a Federal savings association's percentage assets limitation, investment in commercial paper and corporate debt securities must be aggregated with the Federal savings association's investment in consumer loans.

² A Federal savings association may invest in commercial paper and corporate debt securities, which includes corporate debt securities convertible into stock, subject to the provisions of § 560.40.

³ This 2% of assets limitation is a sublimit within the overall 5% of assets limitation on community development loans and investments.

⁴ Amounts in excess of 30% of assets, in aggregate, may be invested only in loans made by the association directly to the original obligor and for which no finder's or referral fees have been paid. A Federal savings association may include loans to dealers in consumer goods to finance inventory and floor planning in the total investment made under this section.

⁵ While there is no statutory limit on certain categories of loans and investments, including credit card loans, home improvement loans, and deposit account loans, the OTS may establish an individual limit on such loans or investments if the association's concentration in such loans or investments presents a safety and soundness concern.

⁶ A Federal savings association may engage in leasing activities subject to the provisions of § 560.41.

⁷ This 1% of assets limitation applies to the aggregate outstanding investments made under the Foreign Assistance Act and in the capital of the Inter-American Savings and Loan Bank. Such investments may be made subject to the provisions of § 560.43.

⁸ A home (or residential) loan includes loans secured by on one-to-four family dwellings, multi-family residential property and loans secured by a unit or units of a condominium or housing cooperative.

⁹ A Federal savings association may make home loans subject to the provisions of § 560.34.

¹⁰ A Federal savings association may issue letters of credit subject to the provisions of § 560.120.

¹¹ Loans secured by savings accounts and other time deposits may be made without limitation, provided the Federal savings association obtains a lien on, or a pledge of, such accounts. Such loans may not exceed the withdrawable amount of the account.

¹² A Federal savings association may only invest in loans secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any of its agencies or instrumentalities where the borrower is a financial institution insured by the Federal Deposit Insurance Corporation or is a broker or dealer registered with the Securities and Exchange Commission and the market value of the securities for each loan at least equals the amount of the loan at the time it is made.

¹³ If the wheels and axles of the manufactured home have been removed and it is permanently affixed to a foundation, a loan secured by a combination of a manufactured home and developed residential lot on which it sits may be treated as a home loan.

¹⁴ Without regard to any limitations of this part, a Federal savings association may make or invest in the fully insured or guaranteed portion of nonresidential real estate loans insured or guaranteed by the Economic Development Administration, the Farmers Home Administration, or the Small Business Administration. Unguaranteed portions of guaranteed loans must be aggregated with uninsured loans when determining an association's compliance with the 400% of capital limitation for other real estate loans.

¹⁵ This category includes obligations issued by any state, territory, or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality of a state or political subdivision), subject to § 560.42.

¹⁶ A Federal savings association may invest in state housing corporations subject to the provisions of § 560.121.

¹⁷ Payments on accounts in excess of the account balance (overdrafts) on commercial deposit or transaction accounts shall be considered commercial loans for purposes of determining the association's percentage of assets limitation.

§ 560.31 Election regarding categorization of loans or investments and related calculations.

(a) If a loan or other investment is authorized under more than one section of the Home Owners' Loan Act, as amended, or this part, a Federal savings association may designate under which section the loan or investment has been made. Such a loan or investment may be apportioned among appropriate categories, and may be moved, in whole or part, from one category to another. A loan commitment shall be counted as an investment and included in total assets of a Federal savings association only to the extent that funds have been advanced and not repaid pursuant to the commitment.

(b) Loans sold to a third party shall be included in calculation of a percentage-of-assets investment limitation only to the extent they are sold with recourse.

(c) A Federal savings association may make a loan secured by assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loans.

§ 560.34 Limitations on home loans.

(a) *Late charges.* A Federal savings association may include in the loan contract a provision authorizing the imposition of a late charge with respect to the payment of any delinquent periodic payment. With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by a Federal savings association, unless any monthly billing, coupon, or notice the Federal savings association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed. A Federal savings association may not impose a late charge more than one time for late payment of the same installment, and any installment payment made by the borrower shall be applied to the longest outstanding installment due. A Federal

savings association shall not assess a late charge as to any payment received by it within fifteen days after the due date of such payment. No form of such late charge permitted by this paragraph shall be considered as interest to the Federal savings association and the Federal savings association shall not deduct late charges from the regular periodic installment payments on the loan, but must collect them as such from the borrower.

(b) *Loan payments and prepayments.* Except for loans to natural persons secured by borrower-occupied property and on which periodic advances are being made, payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or partly to offset payments which subsequently accrue under the loan contract. A Federal savings association may impose a penalty on the prepayment of a loan as provided in the loan contract.

§ 560.40 Commercial paper and corporate debt securities.

Pursuant to 12 U.S.C. 1464(c)(2)(D), a Federal savings association may invest in, sell, or hold commercial paper and corporate debt securities subject to the provisions of this section.

(a) *Limitations.* (1) Commercial paper must be:

(i) Denominated in dollars; and

(ii)(A) As of the date of purchase, as shown by the most recently published rating made of such investments by at least two nationally recognized investment ratings services, rated in either one of the two highest categories; or

(B) If unrated, guaranteed by a company having outstanding paper that is rated as provided in paragraph (a)(1)(ii)(A) of this section.

(2) Corporate debt securities must be:

(i) Denominated in dollars;

(ii) Securities that may be sold with reasonable promptness at a price that

corresponds reasonably to their fair value; and

(iii) Rated in one of the four highest categories by a nationally recognized investment ratings service at its most recently published rating before the date of purchase of the security.

(3) A Federal savings association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any one person or entity affiliated with such issuer, together with other loans shall not exceed the general lending limitations contained in § 563.93(c) of this chapter.

(4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations:

(i) The purchase of securities convertible into stock at the option of the issuer is prohibited;

(ii) At the time of purchase, the cost of such securities must be written down to an amount that represents the investment value of the securities considered independently of the conversion feature; and

(iii) Federal savings associations are prohibited from exercising the conversion feature.

(5) A Federal savings association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

(b) Notwithstanding the limitations contained in this section, the Office may permit investment in corporate debt securities of another savings association in connection with the purchase or sale of a branch office or in connection with a supervisory merger or acquisition.

§ 560.41 Leasing.

(a) *Authorization.* Pursuant to general lending authority in 12 U.S.C. 1464(c)(1)(B), 1464(c)(2)(A), and 1464(c)(2)(D), a Federal savings association may engage in leasing activities that are the functional equivalent of lending, subject to the

limitations of this section. Pursuant to 12 U.S.C. 1464(c)(2)(C), a Federal savings association may invest in tangible personal property for the purpose of leasing that property, subject to the limitations of this section.

(b) *General.* A Federal savings association may become the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, subject to the limitations of this section.

(c) *Finance leasing.* (1) A financing lease of tangible personal property made to a natural person for personal, family or household purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in consumer loans. A financing lease made for commercial, corporate, business, or agricultural purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in commercial loans. A financing lease of residential or nonresidential real property made pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in real estate loans.

(2) To qualify as the functional equivalent of a loan, a financing lease must meet all of the following requirements:

(i) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease.

(ii) Both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property.

(iii) At the termination of a financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of releasing must be reevaluated and recorded at the lower of fair market value or book value.

(3) *Definitions.* For the purposes of this section:

(i) The term *net lease* means, a lease under which the Federal savings association will not, directly or indirectly, provide or be obligated to provide for:

(A) The servicing, repair or maintenance of the leased property during the lease term;

(B) The purchasing of parts and accessories for the leased property; Provided, that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this section;

(C) The loan of replacement or substitute property while the leased property is being serviced;

(D) The purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(E) The renewal of any license, registration or filing for the property unless such action by the Federal savings association is necessary to protect its interest as an owner or financier of the property.

(ii) The term *full-payout lease* means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the association to yield the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease does not exceed 25% of the original cost of the property to the lessor.

(iii) The term *realization of investment* means that a Federal savings association that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(A) Rentals;

(B) Estimated tax benefits, if any; and

(C) The estimated residual value of the property at the expiration of the term of the lease.

(d) *General leasing.* (1) Pursuant to section 5(c)(2)(C) of the HOLA, a Federal savings association may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture for the purpose of rental or sale. Lease investments made under this section are not restricted to being the functional equivalent of loans as is the case for financing leases.

(2) A Federal savings association's investments in such property may not exceed 10% of its assets.

(e) *Salvage powers.* If, in good faith, a Federal savings association believes that there has been an unanticipated

change in conditions that threatens its financial position by significantly increasing its exposure to loss, the provisions of this section shall not prevent the Federal savings association:

(1) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) From including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (d)(1) and (d)(2) of this section.

§ 560.42 State and local government obligations.

Pursuant to 12 U.S.C. 1464(c)(1)(H), a Federal savings association may invest in obligations issued by any State or political subdivision thereof, subject to the following conditions:

(a) A Federal savings association may not invest more than 10% of its capital in obligations of any one issuer, exclusive of general obligations of the issuer.

(b) The obligations must continue to hold one of the four highest national investment grade ratings, or must be issued by a public housing agency and backed by the full faith and credit of the United States.

(c) Notwithstanding the limitations in paragraph (b) of this section, a Federal savings association may invest, in the aggregate, up to one percent of its assets in the obligations of a State, territory, possession, or political subdivision in which the association's home office or a branch office is located.

(d) Notwithstanding the limitations in paragraphs (b) and (c) of this section, a Federal savings association may invest in any obligations approved by the Office.

§ 560.43 Foreign assistance investments.

Pursuant to 12 U.S.C. 1464(c)(4)(C), a Federal savings association may make foreign assistance investments in an aggregate amount not to exceed one percent of its assets, subject to the following conditions:

(a) For any investment made under the Foreign Assistance Act, the loan agreement shall specify what constitutes an event of default, and provide that

upon default in payment of principal or interest under such agreement, the entire amount of outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option. Additionally, the contract of guarantee shall cover 100% of any loss of investment thereunder, except for any portion of the loan arising out of fraud or misrepresentation for which the party seeking payment is responsible, and provide that the guarantor shall pay for any such loss in U.S. dollars within a specified reasonable time after the date of application for payment.

(b) To make any investments in the share capital and capital reserve of the Inter-American Savings and Loan Bank, a Federal savings association must be adequately capitalized and have adequate allowances for loan and lease losses. The Federal savings association's aggregate investment in such capital or capital reserve, including the amount of any obligations undertaken to provide said Bank with reserve capital in the future (call-able capital), will not, as a result of such investment, exceed one-quarter of 1% of its assets or \$100,000, whichever is less.

Subpart B—Lending and Investment Provisions Applicable to All Savings Associations

§ 560.120 Letters of credit.

(a) To the extent that a savings association has been given the authority to invest in letters of credit elsewhere, a savings association may issue and commit to issue letters of credit within the scope of and in conformance with the laws and rules of practice recognized by law, such as the Uniform Commercial Code, the Uniform Customs and Practice for Documentary Credits, the United Nations Commission on International Trade Law, the Convention on Independent Guarantees and Standby Letters of Credit, and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits. Savings associations may pledge collateral to secure its obligations thereunder, subject to the following requirements:

(1) Each letter of credit must conspicuously state that it is a letter of credit;

(2) The issue's undertaking must contain a specified expiration date or be for a definite term, and must be limited in amount;

(3) The issuer's obligation to pay must be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or

nonperformance by the parties to the underlying transaction; and

(4) The account party must have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

(b) To the extent funds are advanced under a letter of credit without compensation from the account party, the amount shall be treated as an extension of credit subject to percentage-of-assets limits and other requirements under an applicable provision of this part.

§ 560.121 Investment in state housing corporations.

(a) Any savings association to the extent it has legal authority to do so, may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation; provided, that such obligations or loans are secured directly, or indirectly through a fiduciary, by a first lien on improved real estate which is insured under the National Housing Act, as amended, and that in the event of default, the holder of such obligations or loans has the right directly, or indirectly through a fiduciary, to subject to the satisfaction of such obligations or loans the real estate described in the first lien, or the insurance proceeds.

(b) Any savings association that is adequately capitalized may, to the extent it has legal authority to do so, invest in obligations (including loans) of or issued by any state housing corporation incorporated in the State in which such savings association has its home or a branch office; provided (except with respect to loans), that:

(1) The obligations are rated in one of the four highest grades as shown by the most recently published rating made of such obligations by a nationally recognized rating service; or

(2) The obligations, if not rated, are approved by the Office. The aggregate outstanding direct investment in obligations under paragraph (b) of this section shall not exceed the amount of the savings association's total capital.

(c) Each state housing corporation in which a savings association invests under the authority of paragraph (b) of this section shall agree, before accepting any such investment (including any loan or loan commitment), to make available at any time to the Office such information as the Office may consider to be necessary to ensure that investments are properly made under this section.

§ 560.170 Records for lending transactions.

In establishing and maintaining its records pursuant to § 563.170 of this

chapter, each savings association and service corporation should establish and maintain loan documentation practices that:

(a) Ensure that the institution can make an informed lending decision and can assess risk on an ongoing basis;

(b) Identify the purpose and all sources of repayment for each loan, and assess the ability of the borrower(s) and any guarantor(s) to repay the indebtedness in a timely manner;

(c) Ensure that any claims against a borrower, guarantor, security holders, and collateral are legally enforceable;

(d) Demonstrate appropriate administration and monitoring of its loans; and

(e) Take into account the size and complexity of a loan.

Subpart C—Adjustable Rate Mortgages

§ 560.210 Alternative Mortgage Parity Act.

Pursuant to 12 U.S.C. 3803, housing creditors that are not commercial banks, credit unions, or Federal savings associations may make alternative mortgage transactions as defined by that section and further defined and described by applicable regulations identified herein, notwithstanding any state constitution, law, or regulation. In accordance with 12 U.S.C. 3807(b), this part 560 and 12 CFR 563.99 are identified as appropriate and applicable to the exercise of this authority and all regulations not so identified are deemed inappropriate and inapplicable. Housing creditors engaged in credit sales should read the term "loan" as "credit sale" wherever applicable.

PART 563—OPERATIONS

15. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

§ 563.95 [Removed]

16. Section 563.95 is removed.

§ 563.97 [Removed]

17. Section 563.97 is removed.

18. Section 563.99 is amended by adding paragraph (g) to read as follows:

§ 563.99 Fixed-rate and adjustable-rate mortgage loan disclosures, adjustment notices, and interest rate caps.

* * * * *

(g) *Exempt transactions.* This section does not apply to an extension of credit primarily for a business, commercial, or agricultural purpose.

§ 563.160 [Removed]

19. Section 563.160 is removed.

§ 563.170 [Amended]

20. Section 563.170 is amended by revising paragraph (c) to read as follows:

§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) *Establishment and maintenance of records.* To enable the Office to examine savings associations and affiliates and audit savings associations, affiliates, and service corporations pursuant to the provisions of paragraph (a) of this section, each savings association, affiliate, and service corporation shall establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts. This includes, without limitation, establishing and maintaining such other records as are required by statute or any other regulation to which the savings association, affiliate, or service corporation is subject. The documents, files, and other material or property comprising said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be.

* * * * *

PART 571—STATEMENTS OF POLICY

21. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§§ 571.8, 571.13, 571.20, 571.22 [Removed]

22. Sections 571.8, 571.13, 571.20, and 571.22 are removed.

Dated: January 5, 1996.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96-409 Filed 1-16-96; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 100**

[CGD13-95-003]

Special Local Regulations; Annual National Maritime Week Tugboat Races, Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to adopt permanent special local regulations for the annual National

Maritime Week Tugboat Races in Seattle, Washington. This event is held each year on the third Saturday in May on the waters of Elliott Bay. In the past, the Coast Guard has established a safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Ben White, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (206) 217-6138.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason for each comment. Two copies of each comment should be provided in an unbound format. All comments should be on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of their comments should enclose stamped, self-addressed postcards or envelopes.

The proposed regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a public

hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information. The principal persons involved in drafting this document are LT Ben White, Project Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, Project Attorney, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The Coast Guard proposes to adopt permanent special local regulations for the annual National Maritime Week Tugboat Races in Seattle, Washington. This event is held on the waters of Elliott Bay each year from 12 p.m. to 4:30 p.m. on the third Saturday in May. In the past, the Coast Guard has established a safety zone each year to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Tug Boat Races are sponsored by the Seattle Maritime Week Committee as part of the Seattle Maritime Week celebration. This one day event has been held on Elliott Bay for the last ten years. The race attracts a large number of spectator craft which gather on the waters near the race course.

Discussion of Proposed Regulation

To promote the safety of both the spectators and participants, the proposed special local regulations would establish a regulated area and prohibit entry into this area during the event. These special local regulations will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the

regulatory policies and procedures of DOT is unnecessary. The regulated areas established by the proposed regulation would encompass less than one square nautical mile on Elliott Bay adjacent to the Seattle waterfront. Entry into the regulatory area would be restricted for less than five hours on the day of the event. These restrictions would have little effect on maritime commerce in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because the impacts of this proposal are expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal will not have a significant impact on a substantial number of small entities.

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the National Maritime Week Tugboat Race will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to

amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.1306 is added to read as follows:

§ 100.1306 National Maritime Week Tugboat Races, Seattle, WA

(a) *Regulated Area.* A regulated area is established on that portion of Elliott Bay along the Seattle waterfront in Puget Sound bounded by a line commencing at latitude 47°37'36.0" N, longitude 122°22'42.0" W; thence to latitude 47°37'24.5" N, longitude 122°22'58.5" W; thence to latitude 47°36'08.0" N, longitude 122°20'53.0" W; thence to latitude 47°36'21.0" N, longitude 122°20'31.0" W; thence returning to the origin. This regulated area resembles a rectangle measuring approximately 3900 yards along the shoreline between Pier 57 and Pier 89, and extending approximately 650 yards into Elliott Bay. Temporary floating markers will be placed by the race sponsors to delineate the regulated area. [Datum: NAD 1983]

(b) *Special Local Regulations.*

(1) No person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard Patrol Commander.

(2) When deemed appropriate, the Coast Guard may establish a patrol consisting of active and auxiliary Coast Guard vessels and personnel in the area described in paragraph (a) of this section. The patrol shall be under the direction of a Coast Guard officer or petty officer designated by the Captain of the Port as the Coast Guard Patrol Commander. The Patrol Commander may forbid and control the movement of vessels in the area described in paragraph (a) of this section.

(3) A succession of sharp, short blasts from whistle or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) *Effective dates.* These regulations become effective annually on the third Saturday of May from 12 p.m. to 4:30 p.m. unless otherwise specified by Federal Register notice.

Dated: December 21, 1995.

John W. Lockwood,

U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 96-449 Filed 1-16-96; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 160

[CGD 94-089]

RIN 2115-AF19

Advance Notice of Arrivals, Departures, and Certain Dangerous Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast guard proposes to amend the requirements for notice of arrival and departure by applying them to all vessels of 300 gross tons or more and eliciting added information. In addition, the Coast Guard proposes to amend the requirement for all foreign vessels regardless of the gross tonnage to give notice of arrival and departure anywhere within the Seventh Coast Guard District. These changes are necessary for the Coast guard to implement more efficiently its programs for safety of vessels and for protection of the marine environment. They should aid in the identification and elimination of substandard ships from U.S. waters, improve emergency response, and facilitate the enforcement of rules governing Certificates of Financial Responsibility.

DATES: Comments must be received on or before April 16, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA, 3406) [CGD 94-089], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

CDR Dennis Haise, Operating and Environmental Standards Division, (202) 267-6451.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 94-089] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Background and Purpose

The Ports and Waterways Safety Act of 1972 [86 Stat. 424], as amended by the Port and Tanker Safety Act of 1978 [92 Stat. 1471], authorizes the Secretary of the Department in which the Coast Guard is operating to require the receipt of notice from any vessel destined for or departing from a port or place under the jurisdiction of the United States. This notice may include any information necessary for the control of the vessel and for the safety of the port or marine environment. See 33 U.S.C. 1223; 33 CFR Part 160, Subpart C. In April, 1994, the Coast Guard established its Port-State-Control Program (PSCP) to eliminate substandard ships from U.S. waters. It developed a comprehensive risk-based targeting scheme to set boarding priorities and used funds provided in the Coast Guard's 1994 appropriations act for this purpose. See Senate Report Number 103-150. The primary factors used in determining which vessels to board are the vessel's: Flag; owner; operator; classification ("class") society; age; and operating

history. The PSCP's success hinges on the ability of the Coast Guard to identify and examine those vessels that seem to pose the greatest risks to life, property, and the environment. By making vessels provide added information about arrival and departure, field units of the Coast Guard will be able to efficiently target vessels and allocate inspection resources.

As the Coast Guard continues enforcing financial responsibility for water pollution under the Oil Pollution Act of 1990, it is important that only those vessels that have satisfactorily demonstrated their ability to meet their responsibility to the U.S. resulting from their discharge of oil or hazardous substances be permitted into U.S. waters. A Certificate of Financial Responsibility (COFR) is required of certain vessels over 300 gross tons, is issued by the Coast Guard, and documents a vessel's compliance with U.S. law on financial responsibility for water pollution. The current threshold of 1600 gross tons for notice means that the Coast Guard gets no advance notice of arrival for many vessels over 300 gross tons required to carry COFRs. Reducing the tonnage threshold will enhance the ability of the Captain of the Port (COTP) to verify compliance by vessels over 300 gross tons with the requirements for the carriage of COFRs.

In 1989, because of the large number of foreign vessels arriving at the port of Miami without notice, in unsafe condition and without proper manning, the Coast Guard amended 33 CFR Part 160 so that all foreign vessels calling in the zone of the COTP Miami had to give notice of arrival.

The COTP Miami runs a vigorous compliance program aimed at these low-tonnage and often substandard ships. However, vessel operators have been able to avoid the stricter requirements and potential enforcement of the COTP Miami by changing their ports of call to other, nearby COTP zones (such as those of Jacksonville, Savannah, Charleston, or Tampa).

To remove the incentive to avoid scrutiny by the COTP Miami, and to improve the effectiveness of efforts by the Seventh Coast Guard District to eliminate substandard ships from U.S. waters; the requirement for notice of arrival by all commercial non-public foreign vessels needs expansion to cover all COTP zones in the Seventh District. The boundaries of the Seventh District appear at 33 CFR 3.35-1(b); the District comprises South Carolina, Georgia, and most of Florida, along with the island possessions of the U.S. pertaining to Puerto Rico and the Virgin Islands.

Discussion of Proposed Rule

Section 160.201(c). This paragraph would remove reference to section 160.209, which is reserved.

Section 160.201(c)(1). This paragraph would reduce the threshold for giving prearrival notice from 1600 to 300 gross tons; but it would require the notice from foreign vessels, entering ports or places throughout the entire Seventh Coast Guard District, regardless of tonnage.

First, the change in tonnage would help the COTP verify the validity of a vessel's COFR before the vessel's arrival in U.S. waters, and prohibit any vessel not in compliance from entering. Second, the change in geographic reach to cover all ports in the Seventh Coast Guard District would remove the incentive to change ports of call to avoid scrutiny by COTP Miami. This should improve the effectiveness of efforts by the Seventh District to eliminate substandard ships from U.S. waters.

The increased population of reporting vessels resulting from a lowering of the threshold of tonnage would allow the Coast Guard to establish and maintain a more comprehensive set of data relative to a flag state's "fleet size"—"fleet size" being the number of distinct vessels of a certain flag calling at U.S. ports in a year. This would aid in a more accurate identification of flag states associated with substandard shipping and improve the usefulness of the PSCP targeting scheme.

Section 160.201(c)(3). This paragraph would make a vessel's International Maritime Organization (IMO) international number, owner, operator, class society, and 24-hour point of contact all reportable elements.

The IMO international number is a unique identifier assigned by the IMO to vessels subject to the International Convention for the Safety of Life at Sea. This number is typically the same number assigned by Lloyds Registry of Shipping, and is a primary vessel-identification number in the Coast Guard's automated Marine Safety Information System (MSIS). The inclusion of a vessel's IMO international number as part of the required report would facilitate the identification and retrieval from MSIS of vessel-specific factors used in the risk-based targeting scheme of the PSCP.

As several of the primary factors in the risk-analysis matrix of the PSCP are a vessel's owner, operator, and class society, COTPs need to learn these data as far in advance as practicable. They could then identify and examine those vessels that seem to pose the greatest

risks and could allocate inspection resources efficiently.

A name and telephone number of a 24-hour point of contact for vessel-related problems or concerns would constitute part of the prearrival notice. Experience shows that, when these data are readily available to the COTP, response to incidents is quicker and more efficient, and problems associated with a vessel's port call are minimized.

Section 160.203. This section would define *gross tons* and *operator* to resolve doubts that might arise regarding applicability of this rule. It would also redefine *public vessel* to conform it to a recent decision by the General Counsel, U.S. Department of Transportation.

Section 160.207(c). This paragraph would bring uniformity to the contents of the notice; uniformity would facilitate compliance by the affected parties. This paragraph would also delete current, although recent, paragraph (c)(5) because the IMO international number would become required information of all covered vessels, not just foreign-flag tank vessels of over 5000 gross tons.

Section 160.211. This section would bring uniformity to the contents of the notice from vessels carrying certain dangerous cargoes; again, uniformity would facilitate compliance by the affected parties. Section 160.211 already requires notices from all vessels carrying certain dangerous cargoes, regardless of tonnage. The items made matters of notice would be IMO international number (if applicable), owner, operator, class society, and 24-hour point of contact.

Section 160.213. Like section 160.211, this section would bring uniformity to the contents of the notice from vessels carrying certain dangerous cargoes; again, uniformity would facilitate compliance by the affected parties. The items made matters of notice would be IMO international number (if applicable), owner, operator, class society, and 24-hour point of contact.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order.

Nor is this rule significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under

paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This rule for the most part would incorporate into an established reporting regime what are becoming customary procedures. The items made matters of notice are readily available to those from whom we seek them. Modern electronic communication simplifies their reporting. Some units of the Coast Guard already receive much of this information from the shipping industry on a voluntary basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. "Small entities" may include: (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Small businesses generally operate fewer vessels and would therefore have fewer reports to make. As the notice can be spoken and need follow no particular format, costs could be limited to those of a brief telephone call. In the Seventh Coast Guard District, all foreign vessels, regardless of size, have had to give notice since 1989, with no reported economic impact.

In an effort to minimize the impacts of the reporting requirements, current § 160.201 already contains several exemptions from the reporting requirements. Notwithstanding the changes this rule would make to § 160.201(c)(1), these exemptions would remain.

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule if adopted, would not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information would be worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This rule would contain collection-of-information requirements in the following sections: 160.207, 160.211,

and 160.213. The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115-0557.

Administration: U.S. Coast Guard.

Title: Advance Notice of Arrivals, Departures, and Certain Dangerous Cargoes.

Need for Information: Senate Report 103-150 on the 1994 appropriation bill for the Department of Transportation and related agencies directed, and the bill as enacted funded, vigorous efforts by the Coast Guard to implement procedures designed to eliminate substandard ships from U.S. waters. In April, 1994, the Coast Guard established its PSCP for this purpose. It developed a comprehensive risk-based targeting scheme to set boarding priorities. The primary factors in this analysis are the vessel's flag, owner, operator, class society, age, and operating history. The PSCP's success hinges on the ability of the Coast Guard to target and examine those vessels that seem to pose the greatest risks to life, property, and the environment. By making vessels provide added information on arrival and departure, Coast Guard field units would be able to efficiently target vessels and allocate inspection resources.

Proposed Use of Information:

Requiring a vessel to give notice that includes its IMO international number, along with the names of its owner, operator, and class society, would enable the COTP to identify a high-risk vessel more effectively before its arrival in U.S. waters, and to take the appropriate safety measures. The inclusion of the IMO international number would facilitate the identification and retrieval from the Coast Guard's MSIS of the vessel-specific factors used in the risk-based targeting scheme of the PSCP.

Frequency of Response: A covered vessel would have to give notice whenever it arrived at a U.S. port. A covered vessel carrying any of certain dangerous cargoes would have to give notice whenever it arrived at or departed from a U.S. port.

Burden Estimate: The estimated burden to respondents would be around 15,700 hours/year.

Respondents: According to MSIS records, around 9800 vessels would be covered.

Form(s): There would be no forms required for collection of this information.

Average Burden Hours per Respondent: Average reporting burden would be 0.185 hours a response. There would be no recordkeeping burden.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under ADDRESSES.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under paragraph 2.B.2e(22) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 160 as follows:

PART 160—[AMENDED]

1. The citation of authority for Part 160 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46.

2. In § 160.201, paragraph (c) is amended by revising its introductory text; (c)(1); and (c)(3) (i), (ii), and (iii) and by adding paragraphs (c)(3) (iv) through (x), to read as follows:

§ 160.201 Applicability and exceptions to applicability.

* * * * *

(c) Section 160.207 does not apply to the following:

(1) Each vessel of 300 gross tons or less, except a foreign vessel of 300 gross tons or less entering any port or place in the Seventh Coast Guard District as described by § 3.35-1(b) of this chapter.

* * * * *

(3) * * *

- (i) Name of the vessel;
(ii) Country of registry of the vessel;
(iii) Call sign of the vessel;

(iv) International Maritime Organization (IMO) international number—or, if the vessel does not have an assigned IMO international number, official number—of the vessel;

(v) Name of the registered owner of the vessel;

(vi) Name of the operator of the vessel;

(vii) Name of the classification society of the vessel;

(viii) Each port or place of destination;

(ix) Estimated dates and times of arrivals at and departures from these ports or places; and

(x) Name and telephone number of a 24-hour point of contact.

* * * * *

3. In § 160.203, new definitions, for “gross tons” and “operator”, are added in alphabetical order, and the definition for “public vessel” is revised, to read as follows:

§ 160.203 Definitions.

* * * * *

Gross tons means the tonnage determined by the tonnage authorities of a vessel’s flag state in accordance with the national tonnage rules in force before the entry into force of the International Convention on Tonnage Measurement of Ships, 1969 (“Convention”). For a vessel measured only under Annex I of the Convention, gross tons means that tonnage. For a vessel measured under both systems, the higher gross tonnage is the tonnage used for the purposes of the 300-gross-ton threshold.

* * * * *

Operator means any person including, but not limited to, an owner, a demise- (bareboat-) charterer, or another contractor who conducts, or is responsible for, the operation of a vessel.

* * * * *

Public vessel means a vessel that is owned or demise- (bareboat-) chartered by the government of the United States, by a State or local government, or by the government of a foreign country and that is not engaged in commercial service.

* * * * *

4. In § 160.207, paragraphs (c)(1) through (c)(5) are revised, and paragraphs (c) (6) through (11) are added, to read follows:

§ 160.207 Notice of arrival: Vessels bound for ports or places in the United States.

* * * * *

(c) * * *

- (1) Name of the vessel;
(2) Country of registry of the vessel;

(3) Call sign of the vessel;

(4) International Maritime Organization (IMO) international number—or, if the vessel does not have an assigned IMO international number, official number—of the vessel;

(5) Name of the registered owner of the vessel;

(6) Name of the operator of the vessel;

(7) Name of the classification society of the vessel;

(8) Name of the port or place of departure;

(9) Name of the port or place of destination;

(10) Estimated date and time of arrival at this port or place; and

(11) Name and telephone number of a 24-hour point of contact.

5. In § 160.211, paragraph (a) is revised to read as follows:

§ 160.211 Notice of arrival: Vessels carrying certain dangerous cargo.

(a) The owner, agent, master, operator, or person in charge of a vessel, except a barge, bound for a port or place in the United States and carrying certain dangerous cargo, shall notify the Captain of the Port of the port or place of destination at least 24 hours before entering that port or place of the—

- (1) Name of the vessel;
(2) Country of registry of the vessel;
(3) Call sign of the vessel;
(4) International Maritime Organization (IMO) international number—or, if the vessel does not have an assigned IMO international number, official number—of the vessel;
(5) Name of the registered owner of the vessel;
(6) Name of the operator of the vessel;
(7) Name of the classification society of the vessel;
(8) Name of the port or place of departure;
(9) Name of the port or place of destination;
(10) Estimated date and time of arrival at this port or place;
(11) Name and telephone number of a 24-hour point of contact;
(12) Location of the vessel at the time of the report;
(13) Name of each of the certain dangerous cargoes carried;
(14) Amount of each of the certain dangerous cargoes carried;
(15) Stowage location of each of the certain dangerous cargoes carried; and
(16) Operational condition of the equipment under § 164.35 of this chapter.

* * * * *

6. In § 164.211, paragraph (b) is amended by removing the reference “(a)(8)” and adding, in its place, the reference “(4) and (a)(8) through (16)”.

7. In § 160.213, paragraph (a) is revised to read as follows:

§ 160.213 Notice of departure: Vessels carrying certain dangerous cargo.

(a) The owner, agent, master, operator, or person in charge of a vessel, except a barge, departing from a port or place in the United States for any other port or place and carrying certain dangerous cargo, shall notify the Captain of the Port or place of departure at least 24 hours before departing, unless this notification was made within 2 hours after the vessel's arrival, of—

- (1) Name of the vessel;
- (2) Country of registry of the vessel;
- (3) Call sign of the vessel;
- (4) International Maritime Organization (IMO) international

number—or, if the vessel does not have an assigned IMO international number, official number—of the vessel;

- (5) Name of the registered owner of the vessel;
- (6) Name of the operator of the vessel;
- (7) Name of the classification society of the vessel;
- (8) Name of the port or place of departure;
- (9) Name of the port or place of destination;
- (10) Estimated date and time of arrival at this port or place;
- (11) Name and telephone number of a 24-hour point of contact;
- (12) Name of each of the certain dangerous cargoes carried;
- (13) Amount of each of the certain dangerous cargoes carried;

(14) Stowage location of each of the certain dangerous cargoes carried; and

(15) Operational condition of the equipment under § 164.35 of this chapter.

* * * * *

§ 160.213 [Amended]

8. In § 160.213, paragraph (b) is amended by removing the reference “(a)(7)” and adding in its place the reference “(4) and (a)(8) through (15)”.

Joseph J. Angelo,
Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96-450 Filed 1-16-96; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register

Vol. 61, No. 11

Wednesday, January 17, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 951207290-5290-01]

1995 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In conformity with Title 13, United States Code, Sections 182, 224, and 225, I have determined that a 1995 Company Organization Survey is needed to update data on the multi-establishment companies in the Standard Statistical Establishment List. The survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multi-establishment companies. These data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

FOR FURTHER INFORMATION CONTACT: Edward D. Walker on (301) 457-2617.

SUPPLEMENTARY INFORMATION: The data collected in this survey will be within the general scope, type, and character of those that are covered in the economic censuses.

This survey has been approved by the Office of Management and Budget (OMB) under Control No. 0607-0444 in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended. Report forms will be furnished to organizations included in the survey, and additional copies of the forms are available on request to the Director, Bureau of the Census, Washington, DC 20233-0101.

I have, therefore, directed that the 1995 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: December 13, 1995.
Martha Farnsworth Riche,
Director, Bureau of the Census.
[FR Doc. 96-436 Filed 1-16-96; 8:45 am]
BILLING CODE 3510-07-P

[Docket No. 951207289-5289-01]

Annual Survey of Communication Services

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that 1995 data on operating revenue and expenses are needed for the telephone, radio and television broadcasting, cable and pay television, and other communication services industries to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data also apply to a variety of public and business needs. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch, Services Division, on (301) 457-2766.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on communication services for the period between economic censuses. The next economic census is in 1997. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

The Bureau of the Census needs reports only from a limited sample of communication firms in the United States. The probability of a firm's selection is based on revenue size (estimated from payroll). The sample will provide, with measurable reliability, national level statistics on operating revenue and expenses for these industries. We will mail report forms to the firms covered by this survey and require their submission within thirty days after receipt.

This survey has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0607-0706 in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

Based upon the foregoing, I have directed that the Annual Survey of Communication Services be conducted for the purpose of collecting these data.

Dated: December 13, 1995.
Martha Farnsworth Riche,
Director, Bureau of the Census.
[FR Doc. 96-437 Filed 1-16-96; 8:45 am]
BILLING CODE 3510-07-P

[Docket No. 951212298-5298-01]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that 1995 data on receipts and revenue for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. Selected service industries include personal, business, automotive, repair, amusement, health, other professional, and social service industries. This survey will yield 1995 estimates of the dollar volume of receipts for taxable firms and revenue of firms and organizations exempt from Federal income taxes. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch, on (301) 457-2766.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on selected service industries for the period between economic censuses. The latest economic census was conducted in 1992. The data

collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

The Census Bureau will select a probability sample of service firms and organizations in the United States (with receipts or revenue size determining the probability of selection) to report in the 1995 Service Annual Survey. The sample will provide, with measurable reliability, national level statistics on receipts and revenue for these industries. We will mail report forms to the firms covered by this survey and require their submission within thirty days after receipt.

This survey has been approved by the Office of Management and Budget (OMB) under OMB approval control number 0607-0422 in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

Based upon the foregoing, I have directed that the Service Annual Survey be conducted for the purpose of collecting these data.

Dated: December 13, 1995.
Martha Farnsworth Riche,
Director, Bureau of the Census.
[FR Doc. 96-438 Filed 1-16-96; 8:45 am]
BILLING CODE 3510-07-P

Bureau of Export Administration

[Docket No. 951212297-5297-01]

RIN 0694-XX03

Foreign Availability Assessment: Initiation of an Assessment on "Stored Program Controlled" Equipment for Testing Integrated Circuits

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment.

SUMMARY: Pursuant to the receipt of an allegation of foreign availability, the Bureau of Export Administration (BXA) is initiating a "denied license" assessment to investigate the foreign availability of "stored program controlled" equipment for testing integrated circuits, and is seeking public comments on the foreign availability of these systems.

DATES: The period for submission of information will close on or before February 16, 1996.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Maurice Cook, Economic Analysis

Division, Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce, Room 1089, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Maurice Cook, Economic Analysis Division, Office of Strategic Industries and Economic Security, Bureau of Export Administration, Telephone: (202) 482-5953; E-mail: MCOOK@BXA.DOC.GOV.

SUPPLEMENTARY INFORMATION: The Bureau of Export Administration assesses claims of foreign availability for items controlled for national security purposes under the provisions of Section 5 of the Export Administration Act of 1979, as amended (the Act), according to procedures and criteria set forth in Part 791 of the Export Administration Regulations. Although the Act has expired, the President invoked the International Emergency Economic Powers Act and continued in effect the system of controls, to the extent permitted by law, in Executive Order 12924 of August 19, 1994, and Notice of August 15, 1995 (60 FR 42767). Under a policy of conforming its actions under the Executive Order, insofar as appropriate, to the provisions of the Act, BXA is following the provisions of Section 5 of the Act in initiating this assessment of foreign availability.

On November 6, 1995, BXA accepted, for filing, a "denied license" foreign availability submission. This submission followed the denial of three license applications for export to the People's Republic of China of "stored program controlled" equipment for testing integrated circuits. This test equipment is controlled for national security reasons under Export Control Classification Number (ECCN) 3B01A: Equipment for the manufacture or testing of semiconductor devices or materials, and specially designed components and accessories therefor.

Upon acceptance of the submission, BXA initiated a "denied license" assessment of the foreign availability of "stored program controlled" equipment for testing integrated circuits. Consistent with the requirements of the Act, BXA intends to publish the results of the assessment by April 6, 1996.

The "denied license" assessment procedure is designed to determine whether a specific license application should be approved on the grounds of foreign availability—it is *not* intended to trigger the removal of U.S. export controls on an item. If the assessment leads to a positive determination of

foreign availability, the Secretary of Commerce will determine whether a "decontrol assessment" is warranted.

To assist BXA in conducting its assessment of whether foreign availability exists, the Economic Analysis Division, Office of Strategic Industries and Economic Security, will accept information regarding the foreign availability of "stored program controlled" equipment for testing integrated circuits. This information must be relevant to the particular exports as described in the denied license applications (i.e., the availability within the People's Republic of China, from non-U.S. sources, of "stored program controlled" equipment for testing integrated circuits). Persons who wish to submit relevant information concerning this foreign availability assessment may submit it to the Economic Analysis Division at the address indicated in the Addresses section of this notice.

Information relevant to the foreign availability assessment may include, but is not limited to, the following: (1) Foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, (2) articles from reputable trade publications, (3) photographs, and (4) depositions based on eyewitness accounts. Supplement No. 1 to Part 791 of the EAR provides additional examples of evidence that may be helpful in conducting this assessment.

The Economic Analysis Division (EAD) will give full and careful consideration to all information submitted in response to this notice that is relevant to this foreign availability assessment. EAD will use this information to supplement other sources of information during its evaluation of the allegation of foreign availability.

EAD will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to EAD separately from any non-confidential information. The top of each page should be marked with the term "Confidential Information". A non-confidential summary, which will be made available for public inspection, must accompany each submission of confidential information. EAD will accept only those confidential submissions that are appropriately identified as such. Any confidential submission that is not appropriately labeled or that does not include a non-confidential summary will be returned to the sender.

Information that is accepted by EAD as privileged under section (b)(3) or (b)(4) of the Freedom of Information Act (5 U.S.C. 552 (b)(3) and (b)(4)) will be kept confidential and will not be available for public inspection, except as authorized by law. In addition, communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

All other information submitted in response to this notice will be a matter of public record and will be made available for public inspection and copying. In the interest of accuracy and completeness, the Department of Commerce requires that comments be submitted in writing. Oral comments must be followed by written memoranda, which will also be a matter of public record and made available for public inspection and copying.

The public record of information received in response to this foreign availability assessment will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained by contacting Theodore Zois, Bureau of Export Administration Freedom of Information Records Inspection Facility, at the above address or by calling (202) 482-1525.

Because the Department of Commerce is subject to strict statutory time limits in conducting foreign availability assessments, the period for submission of relevant information will close February 16, 1996. The Department will consider all information received before the close of the comment period in conducting the foreign availability assessment. Information received after the end of the comment period will be considered, if possible, but its consideration cannot be assured.

Accordingly, the Department encourages persons who wish to provide information related to this foreign availability assessment to do so at the earliest possible time to ensure that the Department is able to fully consider such information.

Dated: December 15, 1995.
Sue E. Eckert,
Assistant Secretary for Export Administration.
[FR Doc. 96-472 Filed 1-11-96; 4:43 pm]
BILLING CODE 3510-DT-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 18, 1996.

ADDRESSES: Written comments and requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202-4561, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202-708-9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing

or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Financial and Performance Report, Library Services and Construction Act, Titles I, II and III.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping: Responses: 55.

Burden Hours: 110.

Abstract: The State Library Administrative Agency submits the Financial and Performance Report reflecting project expenditures and completion data, the relationship of the projects to the LSCA Long-range Plan, and evaluation project data for Title I (Public Library Services); Title II (Public Library Construction and Technology Enhancement); and Title III (Interlibrary Cooperation and Resource Sharing).

Office of the Under Secretary

Type of Review: New.

Title: Case Studies for Direct Loan Evaluation.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Reporting Burden and Recordkeeping: Responses: 1.

Burden Hours: 363.

Abstract: Contractor will conduct site visits of institutions participating in the Federal Direct Student Loan Program to capture information about successful practices, required resources, and experiences with ED administration of the program.

Office of Postsecondary Education

Type of Review: Revision.

Title: Fiscal Operations Report and Application to Participate in Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant, and Federal Work-Study Programs.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Non-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 1.

Burden Hours: 80,131.

Abstract: This application data will be used to compute the amount of funds needed by each institution during the 1997-98 Award Year. The Fiscal operations report data will be used to assess program effectiveness, account for funds expended during the 1995-96 Award Year, and as part of the institutional funding process.

[FR Doc. 96-70 Filed 1-16-96; 8:45 am]

BILLING CODE 4000-01-M

GENERAL SERVICES ADMINISTRATION

Public Building Service

Evo A. DeConcini Federal Building— United States Courthouse, City of Tucson, Arizona, Notice of Availability; Record of Decision

The United States General Services Administration (GSA) announces its decision, in accordance with the National Environmental Policy Act (NEPA) and the Regulations issued by the Council on Environmental Quality, December 8, 1995, to construct a new Federal building—United States Courthouse (FB-CT) in Tucson, Arizona.

The new FB-CT would consist of approximately 419,742 gross square feet (GSF) of building space and 187 on-site parking spaces. The project, designed to relieve overcrowded conditions at the existing court facilities in Tucson, is to be sited within the Central Business Area (CBA) of the City of Tucson, Arizona, is anticipated to be ready for occupancy in the year 1999. The agencies proposed to utilize the new FB-CT are currently housed within the existing Tucson FB-CT, located 55 E. Broadway, and in several leased, commercial, office buildings in the downtown Tucson area. An objective of this project is to consolidate these federal agencies into a single structure within the City's CBA.

Alternatives

The GSA has examined a range of alternatives that could feasibly attain the objectives of the proposed project. NEPA does not require that an agency consider every possibility, but requires that the range of alternatives be comprehensive so that the agency can make a "reasoned choice" among them. Alternatives examined were: 1) Granada North, 2) Granada South, 3) Central 4) Alameda and 5) No action. The Preferred site for the proposed project is Granada North. The site is bound by the US West bank/office building, the historic El Paso and Southwestern depot and courtyard, and a private paved parking lot on the west; West Congress Street on the north; Granada Avenue on the east; and the southern boundary would be a presently undetermined property line located approximately 600 feet south of West Congress Street.

Environmental Impacts/Mitigation Measures

The proposed construction of the FB-CT would result in several significant environmental impacts as described in the Draft Environmental Impact Statement (EIS). All practicable means to avoid or minimize impacts to the area are being considered to the development of the project. Mitigation measures were set forth in the Draft (EIS) and those that can be implemented were adopted by GSA. The GSA shall monitor the implementation of these mitigation measures necessary to assure that measures specified in the Draft and the Record of Decision are carried out.

The General Services Administration believes that there are no outstanding issues to be resolved with respect to the proposed project. The Record of Decision, prepared by GSA addressing this action, is on file and may be obtained from: Ms. Sheryll White, Asset Manager (9PT), U.S. General Services Administration, 525 Market Street, San Francisco, CA 94105 (415) 744-5076.

Dated: January 3, 1996.

Aki K. Nakao,

Acting Regional Administrator.

[FR Doc. 96-432 Filed 1-16-96; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, CDC.

Timer and Date: 8:30 a.m.-3 p.m., January 26, 1996.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This Committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The Committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters to be Discussed: The agenda will include updates from CDC Director, David Satcher, M.D., Ph.D., followed by committee discussion on the Report to Congress on CDC's Priorities for Chronic Disease Prevention and Environmental Health.

Agenda items are subject to change as priorities dictate.

The shutdown of the Federal Government prevented meeting the 15-day publication requirement.

Contact Person for More Information: Martha F. Katz, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, Mailstop D-23, Atlanta, Georgia 30333, telephone 404/639-3243.

Dated: January 10, 1996.

Carolyn J. Russell,

*Director, Management Analysis and Services
Office, Centers for Disease Control and
Prevention (CDC).*

[FR Doc. 96-488 Filed 11-11-96; 4:57 pm]

BILLING CODE 4163-18-M

National Vaccine Advisory Committee (NVAC), Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines (ACCV) Subcommittee on Vaccine Safety, Subcommittee on Immunization Coverage, and Subcommittee on Future Vaccines: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 8:30 a.m.–2:30 p.m., January 22, 1995. 8:30 a.m.–1 p.m., January 23, 1996.

Place: Savoy Suites Georgetown, 2505 Wisconsin Avenue, NW, Washington, DC 20007.

Status: Open to the public, limited only by the space available.

Purpose: The Committee shall advise and make recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be Discussed: The Committee will receive an update on the National Vaccine Program Office and National Vaccine Advisory Committee operations; update on the Interagency Task Force on Vaccine Safety and funding for acting surveillance; update on immunization deliver: insights from recent research on vaccine coverage and a report on the new Women, Infants, and Children demonstration projects; update on vaccine program funding; update from the subcommittee on immunization coverage; proposal for a potential solution to the problem of an increasing menu of pediatric vaccines; defining a vaccine manufacturer/government partnership; update on adult immunization strategies and priorities; report on the influenza pandemic plan; role of the NVAC in fostering the pandemic influenza plan; update on the future vaccines subcommittee; presentation on the presence of reverse transcriptase activity in vaccine products; status of the Advisory Committee on Immunization Practices reevaluation of polio immunization recommendations and adolescent immunization; update on the injury compensation system; an update on USAID; and an information presentation on recent immunization compensation cases impacting immunization.

Name: Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines Subcommittee on Vaccine Safety.

Time and Date: 2:30 p.m.–5 p.m., January 22, 1996

Place: Savoy Suites Georgetown, 2505 Wisconsin Avenue, NW, Washington, DC 20007.

Status: Open to the public, limited only by the space available.

Purpose: This joint ACCV/NVAC subcommittee will review issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: The Subcommittee will discuss the Institute of

Medicine vaccine safety forum and summary of planned workshops; the task force on safer childhood vaccines; and the charge of the Subcommittees.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2:30 p.m.–5 p.m., January 22, 1996

Place: Savoy Suites Georgetown, 2505 Wisconsin Avenue, NW, Washington, DC 20007.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Immunization Coverage will identify strategies and policy options by which to further improve the levels of immunization coverage.

Matters to be Discussed: The Subcommittee will discuss determinants of under vaccination in preschool children; national, State, and local immunization coverage levels; current interventions for immunization and the future health environment.

Name: Subcommittee on Future Vaccines.

Time and Date: 2:30 p.m.–5 p.m., January 22, 1996.

Place: Savoy Suites Georgetown, 2505 Wisconsin Avenue, NW, Washington, DC 20007.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Future Vaccines will develop policy options and guide national activities which will lead to accelerated development, licensure, and best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: The Subcommittee will review and discuss the terms of reference for the Subcommittee; identify the matrix of interactions and partnerships, via specific case studies; describe the process of priority-setting by each of the members of the vaccine research and development community, and define barriers to new vaccine development.

Agenda items for each meeting are subject to change as priorities dictate.

The shutdown of the Federal Government prevented meeting the 15-day publication requirement.

Contact Person for More Information:

Gloria A. Kovach, Committee Management Specialist, National Vaccine Program Office, CDC, 1600 Clifton Road, NE, M/S A20, Atlanta, Georgia 30333, telephone 404/639-3851.

Dated: January 10, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 96-487 Filed 1-11-96; 8:45 am]

BILLING CODE 4163-18-M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1-800-741-8138 or 301-443-0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, time and place. January 29, 1996, 8:30 a.m., rm. 020B, 9200 Corporate Blvd, Rockville, MD. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301-608-2151.

Type of meeting and contact person. Open public hearing, January 29, 1996, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 1:30 p.m.; Ramiah Subramanian Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8320, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, D.C. area), Circulatory System Devices Panel, code 12625.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data,

information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 24, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 29, 1996, the committee will discuss clinical data requirements (experimental designs, protocols, quality assurance, etc.) to be incorporated in a draft guidance for Automatic Implantable Pacer Cardioverter Defibrillator (AIPCD) submissions. Single copies of the draft guidance document will be available from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800-638-2041 or 301-443-6597.

FDA regrets that it was unable to publish this notice 15 days prior to the January 29, 1996, Circulatory System Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency feels that the issue needs to be brought to public discussion urgently and qualified members of the Advisory Panel were available at this time, the agency decided that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 5, 1996.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 96-470 Filed 1-11-96; 4:33 pm]
BILLING CODE 4160-01-F88

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Comment Period on the Draft Environmental Impact Statement and Application for the Proposed Issuance of a Permit To Allow Incidental Take of Threatened and Endangered Species on Plum Creek Timber Company, L.P., Lands in the I-90 Corridor, King and Kittitas Counties, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice, extension of comment period.

SUMMARY: This notice advises the public that the U. S. Fish and Wildlife Service is extending the comment period for the Draft Environmental Impact Statement (DEIS) and the application for the proposed issuance of an incidental take permit (PRT-808398) to Plum Creek Timber Company, L.P. . This notice is provided pursuant to section 10(c) of the Endangered Species Act and National Environmental Policy Act regulations.

DATES: Written comments on the permit application and DEIS should be received on or before January 22, 1996.

ADDRESSES: Comments regarding the application or DEIS, or requests for those documents, should be addressed to William Vogel, U. S. Fish and Wildlife Service, Pacific Northwest Habitat Conservation Plan Program, 3773 Martin Way East, Building C—Suite 101, Olympia, Washington 98501; (360) 534-9330. Please refer to permit No. PRT-808398 when submitting comments. Individuals wishing copies of the documents for review should immediately contact the office listed above.

FOR FURTHER INFORMATION CONTACT: William Vogel, U. S. Fish and Wildlife Service, or Steve Landino, National Marine Fisheries Service, at the office listed above.

SUPPLEMENTARY INFORMATION: On November 17, 1995 (60 FR 222:57722-57724), the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (together the Services) announced the availability of a Draft Environmental Impact Statement and the receipt of an application for the

proposed issuance of a permit to allow incidental take of threatened and endangered species on Plum Creek Timber Company, L.P., lands in the I-90 Corridor, King and Kittitas Counties, Washington. Regulations governing permits for threatened and endangered species are in 50 CFR 17.22 and 17.32.

The Services have received a number of requests for extension of the comment period. In response the Services have extended the comment period until January 22, 1996.

Dated: January 9, 1996.

Thomas J. Dwyer,
Deputy Regional Director, Region 1, Portland,
Oregon.

[FR Doc. 96-478 Filed 1-16-96; 8:45 am]

BILLING CODE 4310-55-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-213 (Sub-No. 5X)]

Canadian Pacific Limited— Abandonment Exemption—in Orleans County, VT

AGENCY: Interstate Commerce
Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts Canadian Pacific Limited, operated as CP Rail System (CPRS), from the prior approval requirements of 49 U.S.C. 10903-04 to permit CPRS to abandon 4.05 miles of rail line, known as the Beebe Subdivision, from milepost 39.04 near Newport, VT, to the end of the line at milepost 34.99 near the U.S.-Canada Border. The exemption will be subject to standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 15, 1996. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)¹ and requests for issuance of a notice of interim trail use under 49 CFR 1152.29 must be filed by January 26, 1996, petitions to stay must be filed by January 31, 1996, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by February 5, 1996, and petitions to reopen must be filed by February 12, 1996.

ADDRESSES: Send pleadings, referring to Docket No. AB-213 (Sub-No. 5X), to: Office of the Secretary, Case Control

¹ See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

Branch, Interstate Commerce Commission, Washington, D.C. 20423; 2 and (2) Petitioner's representative: Larry D. Starns, CP Legal Services, Office of the U.S. Regional Counsel, 1000 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Washington, D.C. 20423. Telephone: (202) 289-4357/4359.

[Assistance for the hearing impaired is available through TDD services at (202) 927-5721]

Decided: December 28, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,
Secretary.

[FR Doc. 96-446 Filed 1-16-96; 8:45 am]

BILLING CODE 7035-01-P

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Notice of Availability of the ACIR Preliminary Report on The Role of Federal Mandates in Intergovernmental Relations, January 1996

SUMMARY: As required by Section 302(c) of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the Advisory Commission on Intergovernmental Relations (ACIR) (42 U.S.C. 4271) hereby announces the availability of the Preliminary Report on The Role of Federal Mandates in Intergovernmental Relations. The Preliminary Report was approved by the Commission on January 5, 1996, and is currently available to the public upon request. ACIR is soliciting comments on the report through March 15, 1996.

FOR FURTHER INFORMATION CONTACT: Philip M. Dearborn, Director, Government Finance Research, ACIR, 800 K Street, NW., Suite 450, South Tower, Washington, DC 20575, Phone: (202) 653-5540, FAX: (202) 653-5429

SUPPLEMENTARY INFORMATION: The Advisory Commission on

² Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is currently under consideration. Until further notice, parties submitting pleadings should continue to use the current name and address.

Intergovernmental Relations (ACIR) is charged in Section 302 of the Unfunded Mandates Reform Act of 1995 with investigating and reviewing the role of Federal mandates in intergovernmental relations and with making recommendations to the President and the Congress. For purposes of Section 302, the law defines "Federal mandate" as "any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty on state, local, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program".

ACIR began its review process by adopting criteria for identifying mandate issues of significant concern and the types of problems to be analyzed. These criteria were published in the Federal Register on July 6, 1995. After development of the criteria, ACIR solicited information on existing federal mandates from a variety of sources including the general public, state, local, and tribal governments and organizations representing the officials of such governments, and public and private organizations interested in mandate issues. Information was received from over half the states, eight municipal leagues, four state associations of counties, several national associations representing state and local governments, and a variety of local government officials.

From the correspondence received, ACIR selected 14 mandates for special analysis. The 14 mandates selected for review illustrate the diverse, complex, and troubling challenges that federal mandates pose for our nation's intergovernmental system. In examining the individual mandates, the Commission primarily considered the fundamental intergovernmental issues associated with the mandate. We urge those reviewing the report to give similar attention to the roles of federal, state, local, and tribal governments as they relate to the mandate.

Common Issues

ACIR's review of existing federal mandates found a number of common issues among the mandates. The following six common issues are discussed in the report along with a proposed ACIR recommendation: (1) Detailed procedural requirements; (2) Lack of federal concern about mandate costs; (3) Federal failure to recognize state and local government's public accountability; (4) Lawsuits by individuals against state and local governments to enforce federal mandates; (5) Inability of very small

local governments to meet mandate standards and timetables; and, (6) Lack of coordinated federal policy with no federal agency empowered to make binding decisions about a mandate's requirements.

Summary of Recommendations on Individual Mandates

The Preliminary Report summarizes proposed recommendations for each of the 14 individual mandates reviewed into three categories. [Note: The Preliminary Report includes a fuller discussion of the individual mandates and the respective proposed recommendations. In addition, Appendix A contains a description of the requirements imposed by the mandate, a discussion of the mandate's background and history, a listing of the concerns expressed by state and local governments, and the recommendation options considered.]

The Commission finds that the following mandates as they apply to state and local governments do not have a sufficient national interest to justify intruding on state and local government abilities to control their own affairs. Thus, ACIR recommends *repealing* the provisions in these laws that extend coverage to state and local governments.

- Fair Labor Standards Act.
- Family and Medical Leave Act.
- Occupational Safety and Health Act.
- Drug and Alcohol Testing of Commercial Drivers.
- Metric Conversion for Plans and Specifications.
- Medicaid: Boren Amendment.
- Required Use of Recycled Crumb Rubber.

The Commission finds that the following mandates are necessary because national policy goals justify their use. Thus, ACIR recommends *retaining* these mandates with modifications to accommodate budgetary and administrative constraints on state and local governments.

- Clean Water Act.
- Individuals with Disabilities Education Act.
- American with Disabilities Act.

The Commission finds that the following mandates are related to acceptable national policy goals, but they should be revised to provide greater flexibility in implementation procedures and more participation by state and local governments in development of mandate policies. Thus, ACIR recommends *revising* these mandates to provide greater flexibility and increased consultation.

- Safe Drinking Water Act.

- Endangered Species Act.
- Clean Air Act.
- Davis-Bacon Related Acts.

Report Availability and Public Comments

The Unfunded Mandates Reform Act of 1995 requires ACIR to hold public hearings on the recommendations contained in the Preliminary Report. To satisfy the statutory requirement, ACIR is sponsoring a Conference on Mandates, March 6-7, 1996, in Washington, DC. In addition, ACIR is soliciting comments on the Preliminary Report from all interested parties.

Copies of the Preliminary Report and information on the conference may be obtained from ACIR, 800 K Street, NW., Suite 450, South Tower, Washington, DC 20575. Phone: (202) 653-5540, FAX: (202) 653-5429. Comments on the Preliminary Report should be addressed to Philip M. Dearborn, Director, Government Finance Research, ACIR. To assure consideration prior to the drafting of a final report, comments should be received by ACIR on or before March 15, 1996.

Dated: January 11, 1996.

William E. Davis,
Executive Director.

[FR Doc. 96-448 Filed 1-16-96; 8:45 am]

BILLING CODE 5500-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36684; File Nos. SR-CHX-95-27, SR-DTC-95-22, SR-MCC-95-04, SR-MSTC-95-10, SR-NSCC-95-15]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; the Depository Trust Company; National Securities Clearing Corporation; Midwest Securities Trust Company; Midwest Clearing Corporation; Order Approving Proposed Rule Changes Regarding Arrangements Relating to a Decision by the Chicago Stock Exchange, Incorporated To Withdraw From the Clearance and Settlement, Securities Depository, and Branch Receive Businesses

January 5, 1995.

In November 1995, several self-regulatory organizations ("SROs") filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ concerning the decision by the Chicago Stock

Exchange, Incorporated ("CHX") to terminate the clearance and settlement services offered by several of its subsidiaries. Those SROs include the CHX, the Midwest Clearing Corporation ("MCC"), the Midwest Securities Trust Company ("MSTC"), The Depository Trust Company ("DTC"), and the National Securities Clearing Corporation ("NSCC").² Notice of the proposals were published in the Federal Register on November 28, 1995,³ December 1, 1995,⁴ and on December 8, 1995.⁵ The Commission received one comment letter expressing concern about the proposed CHX decision⁶ and responses from CHX, MSTC, MCC, and NSCC.⁷ For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description of the Proposals

CHX's filing notes that it is closing its clearance and settlement and securities depository businesses, conducted principally through three subsidiaries, in order to focus its resources on the operations of the exchange. This decision was made by the CHX Board of Directors on November 13, 1995, and approved by the CHX membership on December 14, 1995. The proposals filed by CHX, MSTC, MCC, DTC, and NSCC involve the proposed arrangements relating the CHX's decision. Parties to the proposed arrangements are CHX, MSTC, MCC, Securities Trust Company of New Jersey ("STC/NJ"),⁸ DTC, and NSCC.

As noted in the proposal MSTC and MCC will cease providing securities

² On November 16, 1995, CHX, MCC, and MSTC filed with the Commission proposed rule changes (File Nos. SR-CHX-95-27, SR-MCC-95-04, and SR-MSTC-95-10). On November 13, and November 24, 1995, respectively, DTC and NSCC filed with the Commission proposed rule changes (File Nos. SR-DTC-95-22 and SR-NSCC-95-15).

³ Securities Exchange Act Release No. 36497, (November 20, 1995), 60 FR 58693.

⁴ Securities Exchange Act Release Nos. 36509, (November 27, 1995) 60 FR 61720; 36510, (November 27, 1995), 60 FR 61724; and 36511, (November 27, 1995), 60 FR 61722.

⁵ Securities Exchange Act Release No. 36547 (December 1, 1995), 60 FR 63090.

⁶ Letter from Leland W. Hutchinson, Jr., Freeborn & Peters, [counsel for Scattered Corporation and Laura Bryant ("Scattered and Bryant") members of CHX] to Richard R. Lyndsey, Director, Division of Market Regulation, Commission (December 15, 1995).

⁷ Letters from J. Craig Long, Foley & Lardner [counsel to CHX, MSTC, and MCC], to Mr. Jonathan G. Katz, Secretary, Commission (December 22, 1995) and from Robert J. Woldow, General Counsel, NSCC, to Mr. Jonathan G. Katz, Secretary, Commission (December 27, 1995).

⁸ STC/NJ is a wholly-owned subsidiary of CHX that currently provides certain services, including a securities custody service. STC/NJ is not a clearing agency as defined in the Act and therefore is not required to register with the Commission.

¹ 15 U.S.C. 78s(b)(1) (1988).

depository and securities clearing services, respectively, by January 15, 1996. CHX will assist members of MCC and MSTC to find substitute service providers including other registered clearing agencies and will develop plans to assist floor brokers and specialists to obtain access to NSCC and DTC services by pursuing arrangements with those organizations similar to the arrangements structured by the Pacific and Boston Stock Exchanges.

In general, for a period of ten years CHX, MCC, MSTC, and STC/NJ will not engage in the businesses from which they have decided to withdraw (*i.e.*, the securities clearing, securities depository, and branch receive businesses). However, CHX and its subsidiaries will be free to provide specified securities depository-related and securities clearing-related services and products to CHX members and certain third-parties under certain circumstances.⁹

The proposed rule change modifies CHX's Constitution to reduce the size of the Board of Governors. This reduction conforms with the simultaneous reductions in the size of the boards of directors of MCC and MSTC. Because of its withdrawal from the businesses described above, CHX no longer believes it is necessary to maintain such a large board of directors. As a result, CHX is eliminating the board positions specifically reserved for representatives of MCC and MSTC. Those current board members whose slots have been eliminated may serve out the remainder of their terms.

DTC will offer sole MSTC participants an opportunity to become DTC participants if they meet DTC's qualifications. DTC and MSTC will cooperate to assure the orderly transfer of securities from the custody of MSTC to the custody of DTC for (i) sole MSTC participants and (ii) dual DTC/MSTC participants which authorize such transfer. DTC will acquire certain assets and assume certain lease and other contractual obligations of STC/NJ. DTC also will assume certain lease obligations of CHX and make certain payments to CHX, MSTC, and STC/NJ.

The proposal also makes conforming changes in DTC procedures to, among other things, eliminate the service of providing fourth-party deliveries between participants of the Philadelphia Depository Trust Company ("Philadep")

and participants of MSTC through the facilities of DTC. The proposal also includes an adjustment to reallocate some of the DTC general refund to sole DTC participants to the extent necessary to equalize between sole DTC participants and dual DTC/MSTC participants the significant cost savings dual DTC/MSTC participants will realize as a result of the proposed arrangements.¹⁰

NSCC will offer sole MCC participants an opportunity to become NSCC participants if they meet NSCC's qualifications. NSCC and MCC will cooperate to assure to orderly transfer of continuous net settlement securities positions of (i) Sole MCC participants and (ii) dual NSCC MCC participants which authorize such transfer. NSCC will make certain payments to CHX and MCC.

DTC and NSCC believe that the proposed arrangements will facilitate the industry's planned conversion to same-day funds settlement¹¹ and that the proposal will result in substantial savings for securities industry

¹⁰ DTC has a policy of refunding to its participants each year all revenues in excess of current and anticipated needs. In order to equalize the return on DTC's investment in the arrangements as between dual DTC/MSTC participants and sole DTC participant's DTC proposes to "ear-mark" a portion of its general refund for 1995 and to the extent necessary for 1996 and subsequent years for allocation to sole DTC participants only. Dual DTC/MSTC participants will realize savings because they will no longer have to pay MSTC fees for largely redundant custody-related processing.

¹¹ The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means. Currently, transactions in equities, corporate debt, and municipal debt are settled in "next-day funds" (a term that refers to payment by means of certified checks that are for value on the following day). Transactions in commercial paper and other money market instruments are settled in same-day funds. DTC and NSCC have been working with the industry over the last few years to develop a system that will provide for the settlement of virtually all securities transactions in same-day funds. DTC's and NSCC's efforts have been encouraged by and their plans have been monitored by the staffs of the Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York. In approving certain modifications of DTC's existing system in order to accommodate the overall conversion to same-day funds settlement, the Commission stated that it believes the overall conversion to a same-day funds settlement system will help reduce systemic risk by eliminating overnight credit risk. The same-day funds settlement system also will reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets. Securities Exchange Act Release No. 35720 (May 16, 1995), 60 FR 27360 [File No. ST-DTC-95-06] (order granting accelerated approval to proposed rule change modifying the same-day funds settlement system). Under the conversion plan, all issues currently settling in next-day funds will convert to settlement in same-day funds on a single day. Several months ago, a consensus was reached that the conversion date will be February 22, 1996.

The SROs have stated that where there are interfaces between securities depositories, and interfaces among the securities clearing corporations, same-day funds settlement exposes each depository or clearing corporation to certain risks. These include risks such as the failure of another depository or clearing corporation to settle its new payment obligation because of a failure by one of the participants of such other depository or clearing corporation to settle with it or because such other depository or clearing corporation is experiencing a major system problem. The SROs believe these risks cannot be entirely avoided with existing and available risk management controls. The SROs have stated the CHX's withdrawal from the securities depository and securities clearing corporation business will eliminate the exposure of DTC and its participants and NSCC and its participants to the payment system risks associated with the DTC-MSTC and NSCC-MCC interfaces. At the same time, the SROs believe that their proposed arrangements will provide for the interests of MSTC and MCC participants in an orderly manner that will help assure their successful integration in the process of converting the same-day funds settlement.

Furthermore, interdepository and interclearing corporation interfaces involve the maintenance of substantial facilities, communications networks, and account and inventory reconciliation mechanisms. As a result of the proposal the SROs believe the substantial costs incurred by both DTC and MSTC and by NSCC and MCC in operating their interfaces would be eliminated.¹²

II. Discussion

The Commission must approve proposed exchange and clearing agency rule changes if it finds that the proposals are consistent with the requirements of the Act and the rules

¹² Because CHX no longer will be operating a securities depository, certain changes will be required in DTC procedures, principally the elimination of fourth-party deliveries between MSTC participants and Philadep participants through the interfaces that DTC has maintained with MSTC and Philadep. MSTC and Philadep never established their own interface. In addition, the SROs noted that dual DTC/MSTC and dual NSCC/MCC participants would achieve special savings by discontinuing their payment of MSTC and MCC fees for largely redundant processing costs related to securities clearing and settlement. Furthermore, both DTC and NSCC anticipate an increase in the number of their participants. DTC and NSCC have stated that this increase will result in higher DTC and NSCC transaction volumes thereby reducing the per-unit service costs that must be recovered through DTC and NSCC participant service fees.

⁹ Refer to File Nos. SR-CHX-95-27, Exhibit 2, SR-MCC-95-04, Exhibit 2, and SR-MSTC-95-10, Exhibit 2, for a more detailed description of the proposed arrangements by and among the SROs. A copy of each of the filings and all respective exhibits is available for copying and inspection in the Commission's Public Reference Room.

and regulations thereunder that govern those organizations.¹³ In evaluating a given proposal, the Commission examines the record before it and relevant factors and information.¹⁴ Competition among clearing agencies is a factor that the Commission must consider in its examination.¹⁵ However, Congress explicitly refused to require the Commission to achieve its regulatory objectives in the least

¹³ 15 U.S.C. 78s(b). The Commission's statutory role is limited to evaluating the rules as proposed against the statutory standards. See, S.Rep. No. 75, 94th Cong., 1st Sess., at 13 (1975) (hereinafter "S.Rep.").

¹⁴ The Court of Appeals has noted that in adopting the 1975 amendments to the Act ("1975 Amendments") "Congress recognized the need for a [n]ational system for clearance and settlement of securities transactions," the objective of which is to interconnect all American clearing agencies and place them under uniform rules, so that together they can provide prompt, safe, and efficient clearance facilities that take full advantage of modern data processing and communication technology." *Bradford National Clearing Corporation v. Securities and Exchange Commission*, 590 F.2d 1085, 1091 (D.C. Ct. App. 1978), citing, 15 U.S.C. § 78q-1(a)(1). The 1975 Amendments direct the Commission to establish a national clearing system in accordance with these objectives and with due regard to several concerns, including the maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents. *Bradford*, 590 F.2d at 1091-92, citing, 15 U.S.C. 78q-1(a)(2). Furthermore, to carry out its broad statutory directive, Congress gave the Commission the authority to register clearing agencies that meet certain criteria and "cemented the [Commission's] control over the shape of the clearing industry by requiring its approval of any new or modified rules adopted by a clearing agency." *Bradford*, 590 F.2d at 1092 and 1094.

¹⁵ The Commission received one comment letter in connection with the proposed rule changes filed by CHX, MCC, MSTC, DTC, and NSCC. In the comment letter, Scattered and Bryant expressed concern that the proposed transaction was unduly anticompetitive and would lead to an inevitable monopoly and monopolistic abuse by NSCC and DTC in the business of clearance and settlement. With due consideration given to the concerns raised by Scattered and Bryant, as set forth below, the Commission does not believe that the proposed arrangements will have an effect on or impose a burden on competition not necessary or appropriate in furtherance of Section 17A of the Act. The Commission notes, as asserted by CHX, MSTC, MCC, and NSCC in their response letters, that some of Scattered and Bryant's conclusions appear to blur the distinct standards and objectives applicable to the Commission's examination of issues relating to the national market system as opposed to the national clearance and settlement system. Although "[t]he drafters of the 1975 Amendments assumed that the national market system and national clearing systems would reinforce each other," the national market system and the national clearing system were "not perceived by Congress as identical pillars supporting the legislators' conception of a modernized approach to securities marketing." *Bradford*, 590 F.2d at 1095. In fact, Congress's "directives to the Commission with respect to the [national market and clearing] systems vary slightly but significantly." *Id.* Specifically, fair competition is included as an objective of the national market system, but is not an objective of the national clearance and settlement system. *Id.* at 1095-96. See, 15 U.S.C. §§ 78k-1(a)(1), 78q-1(a)(1), and S.Rep. at 2, 55.

anticompetitive manner and stated that "[c]ompetition was simply not to become paramount to the great purposes of the (1934) Act * * *." ¹⁶ Rather, "at most, [the Act] only requires the Commission to decide that any anticompetitive effects of its actions are 'necessary or appropriate' to the achievement of its objectives." ¹⁷ Thus, in assessing anticompetitive conduct the Commission is required to do no more than balance the maintenance of fair competition along with a number of other equally important express purposes of the Act.¹⁸ In balancing competition concerns, the Commission cannot preserve or promote competition at an unjustifiable cost to its statutory objectives.

Section 6(b)(5) of the Act¹⁹ requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Commission believes CHX's proposed rule change is consistent with section 6(b)(5) of the Act in that it will enable the CHX to focus its resources and efforts on implementing a more viable and profitable long-term strategy for its core business, the exchange, including reengineering and restructuring of the exchange. CHX anticipates that the proceeds of the proposed transaction also will help provide liquidity for the operations of the exchange and that the transaction will allow CHX to avoid significant future capital expenditures for the businesses of MCC, MSTC, and STC/NJ. Consequently, the Commission believes that the proposal should help promote just and equitable principles of trade, remove impediments and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest. In addition, the Commission believes the proposal provides for an orderly closing of services by MCC, MSTC, and STC/NJ and an orderly transition for participants to substitute clearing and depository service providers and to the conversion to same-day funds settlement. Thus, the proposal fosters

cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

Section 17A(b)(3)(F)²⁰ of the Act requires that the rules of a clearing agency be designed to promote prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes the proposed rule changes by CHX, MCC, MSTC, DTC, and NSCC are consistent with the requirements of section 17A(b)(3)(F) because the proposals will facilitate the industry's conversion to same-day funds settlement for virtually all securities transactions and thereby will facilitate the prompt and accurate clearance and settlement of such transactions. The Commission also believes CHX's withdrawal from the securities depository and securities clearing businesses pursuant to the proposed transactions should help make the conversion to and operation of the same-day funds settlement system safer for DTC and NSCC and their respective participants by eliminating the financial exposure and payment system risks associated with the DTC-MSTC and NSCC-MCC interfaces. The Commission also believes the proposals facilitate prompt and accurate clearance and settlement of securities of securities transactions by providing more efficient and less expensive clearing and depository services.²¹ Moreover, because the proposals provide qualified sole MCC participants with access to NSCC's facilities and qualified sole MSTC participants with access to DTC's facilities and provide for the orderly transfer of open positions and securities, the Commission believes the proposals are being implemented consistently with the SROs' obligations to safeguard securities and funds in their custody and control. The Commission appreciates the efforts of the SROs and other regulators during the transition and will continue to monitor developments to facilitate an orderly transfer of accounts.

²⁰ 15 U.S.C. 78q-1(b)(3)(F) (1988).

²¹ The Commission also believes the proposed allocation of DTC's general refund is consistent with the requirements of Section 17A(b)(3)(D) of the Act, which requires the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants, by assuring that DTC's costs associated with the proposed arrangements are equitably allocated among sole DTC participants and dual DTC/MSTC participants based upon DTC's estimate of the savings that each of these groups will obtain as a result of the proposed arrangements.

¹⁶ *Bradford*, 590 F.2d at 1105, quoting, S.Rep. at 14.

¹⁷ *Bradford*, 590 F.2d at 1105.

¹⁸ *Id.* at 1106.

¹⁹ 15 U.S.C. 78f(b)(5) (1988).

The Commission shares the commenter's concern that CHX's decision to withdraw from the clearance and settlement businesses reduces competition in that market. Nevertheless, as discussed in more detail below, the Commission believes circumstances exist that mitigate these concerns. The Commission will monitor developments in various areas closely, including progress in such areas as services pricing²² and service innovation, and will not hesitate to use its authority under the Act to address future competitive concerns.

Despite the dominant market position of DTC and NSCC, the Commission believes the current regulatory scheme and the particular structure and nature of the clearing and depository industries provide ample means of avoiding the potential negative effects of a monopoly. Sections 17A and 19 of the Act and the rules thereunder provide the Commission appropriate and effective regulatory authority over DTC and NSCC.²³ DTC is owned by its members

²² Any change to dues or fees charged by a clearing agency must be filed with the Commission for public comment. 15 U.S.C. § 78s(b)(3)(A) (1988).

²³ The 1975 Amendments provided the Commission with broad authority in the establishment of a national clearance and settlement system through the registration and rule filing processes. Section 17A(b)(3)(A) of the Act requires, among other things that—

A clearing agency shall not be registered unless the Commission determines that * * * [s]uch clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this title and the rules and regulations thereunder * * *.

Section 17A further requires that the rules of a clearing agency—

* * * assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs, * * * provide for the equitable allocation of reasonable dues, fees, and other charges among its participants, * * * [and] promote the prompt and accurate clearance and settlement of securities transactions, * * * assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, * * * foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, * * * remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, * * * and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency * * *.

15 U.S.C. 78q-1(b)(3)(C)-(F) (1988).

Section 19(b) of the Act requires, among other things, that a clearing agency file its proposed rule changes with the Commission for approval and that the Commission publish the proposed rule changes for public comment prior to approval. Accordingly, all interested persons have an opportunity to submit written data, views and arguments

who utilize its services; NSCC is owned by the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers, which are themselves membership organizations. DTC's and NSCC's boards of directors are comprised of their members. Both NSCC and DTC must assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. In addition, as previously noted, NSCC and DTC not only provide services at costs reviewed by their user comprised boards of directors and subject to public notice and comment. NSCC provides monthly discounts and DTC provides annual rebates to their participants in the event that any fees collected have not been expended. The Commission believes existing regulations and member control have provided and will continue to provide the appropriate mechanisms to monitor the operations of DTC and NSCC.

The Commission also believes that after consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost depository and clearing services provided under the mandate of the Act. The overall cost to the industry of having such services available should be reduced, thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a depository's and a clearing corporation's interface costs must be mutualized thereby requiring some participants to subsidize costs incurred by others, CHX's withdrawal from the depository and clearing businesses should reduce costs to its members and to participants of DTC and NSCC and thereby remove impediments to competition. Finally, CHX's ability to focus its resources on the operations of its exchange should help enhance competition among securities markets. The Commission believes, based upon its obligation to balance the foregoing factors against the competition concerns attendant to the proposed transaction, that the proposed transaction advances the objectives of the national clearance and settlement system without an inappropriate or unnecessary burden upon competition.

However, the Commission recognizes that consolidation of core services poses a risk that support for innovative products, trading systems, and clearing procedures could flounder.

concerning such proposed rule changes. 15 U.S.C. 78s(b)(1) (1988).

Accordingly, NSCC and DTC must be responsive to the particular needs of their constituents, including exchanges, to support innovation and application of new technologies. The existence of competitive organizations such as an independent depository for mortgage-backed securities and clearing corporations for options, as well as the potential for new clearing agency registrants, offer potent checks on monopoly power.²⁴ The Commission notes that the proposed transaction itself provides for certain competition by CHX, MCC, and MSTC notwithstanding the general ten-year noncompetition provisions. The proposed transaction permits CHX, MSTC, and MCC to, among other things, develop securities depository services or securities clearing services for new products of CHX if DTC and/or NSCC cannot develop and provide services for the new product at a fee that is reasonably acceptable to CHX.

The Commission intends to monitor closely NSCC and DTC actions in such areas as integration of post-trade information proceeding, settlements in foreign currency, and developing links to clearing agencies for options and futures. Currently, the Commission is anticipating such innovative actions as the implementation of the Direct Registration System by DTC and others and the execution of the accord between NSCC and the Options Clearing Corporation. If necessary, the Commission will use its authority to require clearing agency action to promote prompt and accurate clearance and settlement or the safeguarding of funds and securities.²⁵

²⁴ Although NSCC and DTC have maintained and even increased their large market share in the industry, in recent years there has been increasing competition by clearing corporations that provide services in connection with particular securities. *E.g.*, Securities Exchange Act Release Nos. 35198 (January 6, 1995) 60 FR 3286 [File No. 600-24] (notice of filing and order approving application by Delta Government Options Corporation for extension of temporary registration as a clearing agency); 35482 (March 13, 1995) 60 FR 14806 [File No. 600-25] (notice of filing of request and order approving application by Participants Trust Company for extension of temporary registration as a clearing agency); and 36573 (December 12, 1995), [File No. 600-27] (order approving application by the Clearing Corporation for Options and Securities for exemption from registration as a clearing agency). These specialized clearance and settlement service providers have developed markets that are unlikely to encounter the competitive strain and inefficiencies associated with the redundant services and infrastructure described in the proposed rule changes.

²⁵ The Commission's broad rulemaking authority set forth in Section 17A(d) of the Act provides in part that "[n]o registered clearing agency * * * shall, directly or indirectly, engage in any activity as a clearing agency, * * * in contravention of such rules and regulations (A) as the Commission may

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Sections 6(b)(5) and 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-CHX-95-27, SR-MSTC-95-10, SR-MCC-95-04, SR-DTC-95-22, and SR-NSCC-95-15) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-426 Filed 1-16-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36686; File No. SR-DTC-95-25]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of a Proposed Rule Change To Allow Participants To Make Intraday Withdrawals of Principal and Income Payments

January 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 15, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-95-25) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow DTC participants to make intraday withdrawals of certain principal and income payments ("P&I payments")² that have been credited to

prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, or (B) as the appropriate regulatory agency for such clearing agency * * * may prescribe as necessary or appropriate for the safeguarding of securities and funds." 15 U.S.C. 78q-1(d)(1) (1988).

²⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² These payments include dividend, interest, reorganization and redemption payments, and other periodic payments.

the participants' money settlement accounts at DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In a memorandum dated July 29, 1994, which was issued jointly with the National Securities Clearing Corporation ("NSCC") and which described the planned conversion of DTC's money settlement system to an entirely same-day funds settlement ("SDFS") system, DTC announced plans to offer a service for intraday withdrawal of P&I payments. The service was developed in response to participants' requests to have the funds resulting from P&I payments available for participants' use prior to the time of DTC money settlement at the end of the day. DTC plans to begin the new service in the first quarter of 1996.

In the current next-day funds settlement ("NDFS") environment, P&I payment allocations are credited to participants' accounts on a regular basis at a specific time during the day. Under the proposed rule change, P&I payment allocations for SDFS issues will be credited to participants' money settlement accounts throughout each processing day as funds are received by DTC from issuers and their paying agents. A participant only may withdraw P&I payments that have been credited to its account. Withdrawal requests for P&I payments will be subject to the risk management controls of the SDFS system (*i.e.*, collateral monitor and net debit caps). Any withdrawal request that is blocked due to insufficient collateral or a net debit cap will recycle until enough collateral or settlement credits have been generated to satisfy the collateral or net debit cap deficiency or until the end of the recycle period on that day. Any

³ The Commission has modified the text of the summaries submitted by DTC.

early withdrawal requests still recycling at the end of the recycle period will be dropped from the system, and the P&I payment allocation will be included in the end-of-day settlement.

DTC believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposed rule change will facilitate the processing of P&I payments through DTC's facilities. DTC also believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the intraday withdrawals of P&I payments will be subject to DTC's existing SDFS system risk management controls.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

All participants were informed of the proposed rule change by a DTC Important Notice dated October 12, 1995, as well as by the 1994 memorandum referred to above. Written comments from DTC participants or others have not been solicited or received on the proposed rule change. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR-DTC-95-25 and should be submitted by February 7, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-425 Filed 1-16-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36682; File No. SR-Phlx-95-89]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the PHLX's Schedule of Fees and Charges

January 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On December 21, 1995, the Phlx submitted to the Commission Amendment No. 1 to the proposal,¹ and on January 4, 1996 the Phlx submitted Amendment No. 2 to the proposal.² The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b-4 under the Act, is proposing to amend the PHLX's Schedule of Fees and Charges respecting the charges for non-exchange sponsored stock execution machines³ operated by PHLX members on the PHLX equity floor. The proposed amendment would provide a \$125 credit on the fees charged on each stock execution machine operated by any member firm for each 2,500 trades such member executes on the PHLX equity floor in a non-specialist account.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

Since 1990, the Exchange has imposed a monthly proprietary stock execution machine charge of \$250.00.⁴ Since April 1994, the PHLX has provided a monthly credit of 50% of the fees charged for each stock execution machine operated by a member per each 2,500 trades executed by such member on the PHLX.⁵ This credit has not been authorized to exceed 50% of the total stock execution machine billing charges per member operating such machine.

Effective for the January 1996 billing cycle, the proposed amendment would provide a \$125 credit on the fees charged on each stock execution machine operated by any member firm

for each 2,500 trades such member executed on the PHLX equity floor in a non-specialist account. The one material change to the existing credit is that credits may now be utilized by the member firm on an unrestricted basis to potentially offset its entire monthly equity floor stock execution machine charges.⁶

The purpose of the proposed rule change is to amend the PHLX's current schedule of fees and charges and to further underscore the Exchange's equity floor as a highly attractive floor of execution for a member firm's business.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act⁷ in that it provides for equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments 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 foregoing rule change establishes or changes a due, fee or other charge by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (e) of Rule 19b-4 thereunder.⁹ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

⁶ The Exchange stated that the monthly credit provided to any member shall never exceed 100% of the total monthly stock execution machine charges imposed upon such member. Telephone conversation between Lydia Gavalis, Asst. General Counsel, Phlx, and Jon E. Kroeper, Attorney, SEC, on December 22, 1995.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(e).

⁴ 17 CFR 200.30-3(a)(12) (1994).

¹ See Letter from William W. Ochimoto, Vice President and General Counsel, Phlx, to Jon E. Kroeper, Attorney, SEC, dated December 21, 1995. Amendment No. 1 deleted text requiring member firms to clear trades through the Stock Clearing Corporation of Philadelphia in order to receive the credit provided by the proposed rule change.

² See Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Jon E. Kroeper, Attorney, SEC, dated January 4, 1996. Amendment No. 2 added a note describing the stock execution machine charge credit to the Phlx's Schedule of Fees and Charges.

³ Stock execution machines are terminals that route order flow to other marketplaces. Currently, the only stock execution machines at the Phlx are Designated Order Terminals that route orders to the New York Stock Exchange.

⁴ See Securities Exchange Act Release No. 28212 (July 17, 1990), 55 FR 30065 (July 24, 1990).

⁵ See Securities Exchange Act Release No. 33954 (April 21, 1994), 59 FR 22191 (April 29, 1994).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-95-89 and should be submitted by February 7, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-424 Filed 1-16-96; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Aviation Rulemaking Advisory Committee to discuss air carrier/general aviation maintenance issues.

DATES: The meeting will be held on February 6, 1996, at 8:30 a.m., and should adjourn by 3 p.m. Arrange for oral presentations by January 23, 1996.

ADDRESSES: The meeting will be held at the Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Suite 1100, Washington, DC, at 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Herber, Meeting Coordinator, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3498; fax number (202) 267-5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-

463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to consider air carrier/general aviation maintenance issues. The meeting will be held on February 6, 1996, at Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Suite 1100, Washington, DC, at 8:30 a.m. The agenda will include:

- A final NPRM recommendation from the Part 65/66 Working Group and possible distribution of supporting advisory materials;
- Consideration of a revised, delayed, or canceled task for the General Aviation Maintenance Working Group;
- Possible suspected unapproved parts discussion with FAA officials;
- Disposition of the International Airworthiness Communications Working Group;
- Discussion about training and qualification of working group chairs;
- Discussion about major/minor task revision;
- Discussion about whether ARAC should recommend a task for parts removal documentation;
- Consideration of future activities.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before January 23, 1996, to represent oral statements at the meeting. The public may present written statements at any time by providing 35 copies to the Assistant Chair or by presenting the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT**. The Assistant Chair may limit the time allowed for oral statements to fit the time available. The Assistant Chair may also allow questions from the public, again subject to time available.

Issued in Washington, DC, on January 11, 1996.

Benjamin J. Burton, Jr.,

Acting Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 96-441 Filed 1-11-96; 2:23 pm]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on February 1 and 2, 1996 beginning at 8:30 a.m. on February 1. Arrange for oral presentations by January 22, 1996.

ADDRESSES: The meeting will be held at the Travelodge Hotel, Resort and Marina; Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held February 1 & 2, 1996 at the Travelodge Hotel, Resort and Marina; Long Beach, California.

The agenda for the meeting will include:

- Opening remarks.
- Review of action items.
- Reports of working groups.
- Vote on proposed methods for improving the timeliness of approvals for alternative methods of compliance with airworthiness directives.
- Possible vote on a draft Notice of Proposed Rulemaking on Gate Requirements for High Lift Devices.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 22, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on January 11, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96-442 Filed 1-11-96; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Houghton County Memorial Airport, Hancock, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 16, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Sandra D. LaMothe, Airport Manager, of the Houghton County Airport Committee at the following address: Route 1, Box 94, Calumet, Michigan 49913.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Houghton County Airport Committee under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon B. Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313-487-7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 18, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Houghton County Airport Committee was substantially complete within the requirements of section

158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 27, 1996.

The following is a brief overview of the application.

PFC Application No.: 96-04-C-00-CMX

Level of the proposed PFC: \$3.00
Proposed charge effective date: July 1, 1996

Proposed charge expiration date: December 31, 1997

Total estimated PFC revenue: \$73,895.00

Brief description of proposed project(s): Rehabilitate airport rescue fire fighting track vehicle; Rehabilitate airport electrical vault; Airport boundary survey and monumentation, Update existing Exhibit "A" Property Map; PFC Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not applicable.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Houghton County Airport Committee.

Issued in Des Plaines, Illinois, on January 4, 1996.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96-435 Filed 1-16-96; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Dwight David Eisenhower Transportation Fellowship Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice inviting fellowship applications.

SUMMARY: The Federal Highway Administration announces the fiscal year (FY) 1996 Eisenhower Transportation Fellowship Program. The objectives of the overall program are to attract the Nation's brightest minds to the field of transportation, to enhance the careers of transportation professionals by encouraging them to seek advanced degrees, and to retain top talent in the transportation community of the United States. This notice contains instructions for submitting applications for the five fellowships under the program.

DATES: The closing date for submission of student applications under this

announcement is February 16, 1996. The closing date for submission of faculty fellowship applications is April 16, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Ilene Payne, Director, Universities and Grants Programs, National Highway Institute (HHI-20), Federal Highway Administration, 901 North Stuart Street, Suite 300, Arlington, Virginia 22203; Tel: (703) 235-0538, FAX: (703) 235-0593. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Dwight David Eisenhower Transportation Fellowship Program was authorized by section 6001 of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, 105 Stat. 1914. The program is expected to enhance the educational level of the transportation work force in the United States. The program will contribute to the talent pool in transportation because it encourages students from their senior year through the post doctorate level to pursue careers in fields related to transportation.

The Eisenhower Program is a DOT-wide fellowship program managed by the National Highway Institute. The program was developed in the Summer of 1992. Brochures were published and distributed in the Fall of 1992. The first fellowships were awarded in the Spring of 1993. FY 1996 funding for the program is \$2 million, which will fund 125 fellowship recipients.

All fellowship recipients must be in a field of study which is directly related to transportation. For students pursuing degrees, the fellowship recipient's degree program must contain a major, minor or emphasis in transportation.

In addition, each fellowship has specific requirements unique to that fellowship.

The five fellowships are:

Eisenhower Graduate Fellowships, to enable students to pursue Masters Degrees or Doctorates in transportation-related fields at the school of their choice;

Eisenhower Grants for Research Fellowships (GRF) to acquaint students who are on-site with transportation research, development, and technology transfer activities at the U.S. Department of Transportation;

Eisenhower Historically Black Colleges and Universities (HBCU) Fellowships, to provide HBCU students with additional opportunities to enter careers in transportation (announcements are issued by recipient HBCUs);

Eisenhower Hispanic Serving Institutions (HSI) Fellowships, to provide HSI students to enter careers in transportation (announcements are issued by recipient HSIs); and

Eisenhower Faculty Fellowships, to provide talented faculty in transportation fields with opportunities to improve their transportation knowledge, including attendance at conferences, courses, seminars, and workshops in the United States.

Applications must be submitted by April 16, 1996, and will be evaluated by review panels. All applicants will be notified of the results of the panel evaluation. Each fellowship has specific requirements and forms which can be obtained by writing a letter of request to the address listed under the caption **FOR FURTHER INFORMATION CONTACT**.

Authority: 23 U.S.C. 307(a)(1)(c)(ii) and 315; 49 CFR 1.48.

Issued on: January 4, 1996.

Rodney E. Slater,

Federal Highway Administration.

[FR Doc. 96-445 Filed 1-16-96; 8:45 am]

BILLING CODE 4910-22-P

Maritime Administration

Notice of Approval of Applicant as Trustee

Notice is hereby given that Nationsbank Leasing Corporation, with offices at 2300 Northlake Centre Drive, Suite 300, Tucker, Georgia 30084, has been approved as Trustee pursuant to Public Law 100-710 and 46 CFR Part 221.

Dated: January 4, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Acting Secretary.

[FR Doc. 96-431 Filed 1-16-96; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Charter Filing and Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of charter filing and open meeting.

SUMMARY: This notice announces the filing of the charter for the Community Development Advisory Board (the "Advisory Board"), which will provide

advice to the Director of the Community Development Financial Institutions Fund (the "Fund"). This Notice also announces the first meeting of the Advisory Board.

DATES: The initial meeting of the Community Development Advisory Board will be on Friday, February 2, 1996 at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 5116, Washington, DC 20220, (202) 622-8662 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Community Development Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended, (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application. The Advisory Board shall meet at least annually.

The Advisory Board consists of 15 members. Six are ex officio members from the Departments of Agriculture, Commerce, Housing and Urban Development, Interior and Treasury and the Small Business Administration. The remaining nine members are private citizens appointed by the President, who were selected, to the maximum extent practicable, to provide for national geographic representation and racial, ethnic and gender diversity. These nine members consist of two individuals who are officers of existing community development financial institutions; two individuals who are officers of insured depository institutions; two individuals who are officers of national consumer or public interest organizations; two individuals who have expertise in community development; and one individual who has personal experience and specialized expertise in the unique lending and community development issues confronted by Indian tribes on Indian Reservations.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and that a

regulatory impact analysis therefore is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The initial members of the Community Development Advisory Board are:

- (1) the Secretary of Agriculture or his or her designee;
 - (2) the Secretary of Commerce or his or her designee;
 - (3) the Secretary of Housing and Urban Development or his or her designee;
 - (4) the Secretary of the Interior or his or her designee;
 - (5) the Secretary of the Treasury or his or her designee;
 - (6) the Administrator of the Small Business Administration or his or her designee;
 - (7) Connie E. Evans, President, Women's Self-Employment Project, Chicago, Illinois;
 - (8) vacant;
 - (9) George P. Surgeon, President, Chairman and CEO, Elk Horn Bank and Trust, Arkadelphia, Arkansas;
 - (10) Carol J. Parry, Managing Director, Chemical Bank, New York, New York;
 - (11) John E. Taylor, President and Chief Executive Officer, National Community Reinvestment Coalition, Washington, DC;
 - (12) Clara G. Miller, Chair of the Board, National Association of Community Development Loan Funds, Philadelphia, Pennsylvania;
 - (13) Frank T. Ballesteros, Executive Director, PPEP Microbusiness and Housing and Development Corporation, Tucson, Arizona;
 - (14) John A. Litzenberg, Program Officer, Charles Stewart Mott Foundation, Flint, Michigan; and
 - (15) Jacqueline L. Johnson, Executive Director, Tlingit-Haida Regional Housing Authority, Juneau, Alaska.
- The first meeting of the Advisory Board, which will be open to the public, will be held at the Office of Thrift Savings Auditorium, 1700 G Street NW, Washington, DC on Friday, February 2, 1996 at 9:30 a.m. The room will accommodate 75 persons. Seats are available on a first-come, first-served basis. Participation in the discussions at the meeting will be limited to Advisory Board members and Department of the Treasury staff. Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund, at the address of the Fund specified above in the For Further Information Contact section, by 4:00 p.m. on Wednesday, January 31, 1996.
- At the meeting the members of the Advisory Board will discuss and

provide comments on the interim regulations for the Community Development Financial Institutions Program and the Bank Enterprise Award Program and provide general advice on the implementation of the programs. Members of the Advisory Board will also discuss how the Fund's programs and policies can address some of the challenges faced by community development financial institution practitioners, banks and thrifts engaged in community development lending and investment activities.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104-19, 109 Stat. 237.

Dated: January 11, 1996.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

[FR Doc. 96-451 Filed 1-16-96; 8:45 am]

BILLING CODE 4810-70-U

Community Development Financial Institutions Program; Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of extension and availability.

SUMMARY: The Department of the Treasury is extending the application due dates for the Bank Enterprise Award (BEA) Program from January 16, 1996 to January 29, 1996 and for the Community Development Financial Institutions (CDFI) Program from January 22, 1996 to January 29, 1996. This notice also serves as a reminder of the availability and distribution of supplemental information to assist potential applicants in completing the applications for these two programs.

DATES: The application deadline for the BEA Program is extended from January 16, 1996 to January 29, 1996. The application deadline for the CDFI Program is extended from January 22, 1996 to January 29, 1996. The deadline for receipt of an application is 4 p.m. Eastern Standard Time on January 29, 1996. An application received after the specified date and time will not be accepted and will be returned to the sender. Applications sent by FAX will not be accepted.

ADDRESSES: All questions or comments concerning the contents of this action should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Ave., NW Room 5116, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Ave., NW Room 5116, Washington DC 20220 at (202) 622-8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On October 19, 1995 the Department of the Treasury published a Notice of Funds Availability (NOFA) for the CDFI Program (60 FR 54136) and a separate NOFA for the BEA Program (60 FR 54140). The CDFI Program NOFA announced the availability of up to \$31 million for program awards and gave an application deadline of December 22, 1995. The BEA Program NOFA announced the availability of up to \$15.5 million for program awards and gave an application due date of December 15, 1995. The Department of the Treasury subsequently published a Notice on December 8, 1995 (60 FR 63120) extending the application deadline for the BEA Program from

December 15, 1995 to January 16, 1996 and extending the application deadline for the CDFI Program from December 22, 1995 to January 22, 1996.

This Notice extends the application due dates for the Bank Enterprise Award (BEA) Program from January 16, 1996 to January 29, 1996 and for the Community Development Financial Institutions (CDFI) Program from January 22, 1996 to January 29, 1996. This notice also announces the availability and distribution of supplemental information to assist potential applicants in completing the applications for these two programs. Notice of availability of this information was originally published as part of the Notice published in the Federal Register on December 8, 1995.

The Fund is extending the application deadlines for two reasons. First, many potential applicants to the BEA Program have been unable to obtain required Bureau of Labor Statistics data as a result of the three week furlough of employees at the U.S. Department of Labor. Second, severe weather conditions during the week of January 15, 1996 closed the Federal government in the Washington DC area. This shutdown has adversely impacted the ability of many potential applicants to obtain data and other technical information necessary to complete and submit their applications to the Fund.

Authority: 12 U.S.C. 4703, 4717; Chapter X, Pub.L. 104-19, 109 Stat. 237; 12 CFR 1805.700.

Dated: January 11, 1996.

Kirsten S. Moy,

Director, Community Development Financial Institution Fund.

[FR Doc. 96-452 Filed 1-16-96; 8:45 am]

BILLING CODE 4810-70-P

Sunshine Act Meetings

Federal Register

Vol. 61, No. 11

Wednesday, January 17, 1996

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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting, described below, regarding DOE's efforts to attract and retain scientific and technical personnel who are qualified to provide the management, direction, and guidance essential to safe operation of DOE's defense nuclear facilities.

TIME AND DATE: January 23, 1996, 9:00 a.m.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board, acting pursuant to its enabling statute, issued Recommendation 93-3 designed to foster strong endorsement, involvement, and guidance by the DOE's top management in developing programs targeted at upgrading competence of the DOE's staff. The Secretary of Energy has accepted this Recommendation. The Board will hold a public meeting to review DOE's progress in developing the programs and the several initiatives needed to raise the technical competency of DOE staff.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788-4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board has a responsibility to ensure that health and safety of the public, including the workers, at DOE defense nuclear facilities are adequately protected. In doing so, the Board has looked to DOE to maintain high-quality technical expertise to deal with the potential hazards inherent in nuclear materials production, processing, and manufacturing within the DOE's defense nuclear complex. The Board's concern for the DOE's technical expertise is long

standing. In several of its annual reports the Board has observed that:

"* * * the most important and far-reaching problem affecting the safety of DOE defense nuclear facilities is the difficulty in attracting and retaining personnel who are adequately qualified by technical education and experience to provide the kind of management, direction, and guidance essential to safe operation of DOE's defense nuclear facilities."

The Board's most comprehensive effort to improve DOE's technical capability at its defense nuclear facilities was expressed in Recommendation 93-3, dated June 1, 1993. In that Recommendation, the Board stated:

"Nuclear weapons development and production have progressed over the years from early efforts of a small group of highly talented, ingenious individuals in scientific laboratories to employment of thousands of workers in industrial-type production environments. While the national response to today's changing international scene is resulting in downsizing of the nuclear stockpile and a change in mission of many of the defense nuclear facilities, the need remains for continuing vigilance to protect public and worker health and safety. In fact, a case can be made for the need for greater vigilance now throughout the weapons complex because of increased risk of equipment mishaps in aged facilities, loss of existing technical expertise through attrition and downsizing, and a reduced inclination for young engineers and scientists to get involved in the nuclear weapons field.

"Nevertheless, the level of scientific and technical expertise in the DOE of defense nuclear facilities and operations had been declining."

Recommendation 93-3, in its entirety, is on file in DOE's Public Reading Rooms, at the Defense Nuclear Facilities Safety Board's Washington office, and on the Internet through access to the Board's electronic bulletin board at the following address: WWW.DNFSB.GOV. It is also set forth in the Federal Register at 58 FR 32109.

In accord with the statute establishing the Board, a public meeting will be conducted to lay the groundwork for a full assessment of the DOE's initiatives to deal with the problem of attracting and retaining technical personnel with exceptional qualifications. To assist the Board and inform the public, individual Board members will present their views, and the Board's staff will brief the Board on related topics, including, but not limited to:

1. Current level of technical expertise within selected DOE programs at defense nuclear facilities.
2. Board initiatives to identify and alleviate shortcomings in DOE technical capability.
3. DOE's use of excepted service personnel authority to acquire highly-qualified technical and scientific personnel.
4. Board staff's current assessment of the acquisition of highly-qualified DOE technical and scientific personnel and DOE's program to improve technical expertise of incumbents.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office.

The Board reserves its rights to further schedule and otherwise regulate the course of this meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: January 11, 1996.

John T. Conway,

Chairman.

[FR Doc. 96-502 Filed 1-11-96; 5:08 pm]

BILLING CODE 3670-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to the Federal Register on Wednesday, January 3, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, January 10, 1996.

CHANGES IN THE MEETING: DUE TO THE CLOSURE OF THE FEDERAL GOVERNMENT, THE OPEN AND CLOSED MEETINGS WERE CANCELED.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 11, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-443 Filed 1-11-96; 2:28 pm]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 22, 1996.

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. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 11, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-505 Filed 1-11-96; 5:11 pm]

BILLING CODE 6210-01-P

FOREIGN CLAIMS SETTLEMENT COMMISSION ANNOUCEMENT IN REGARD TO COMMISSION MEETINGS AND HEARINGS: The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Fri., Jan. 19, 1995 at 10:30 a.m.

SUBJECT MATTER: Consideration of proposed decisions on claims against Albania.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street NW., Room 6002, Washington, DC 20579. Telephone: (202) 616-6988.

Dated at Washington, DC on January 11, 1996.

Jeanette Matthews,

Administrative Assistant.

[FR Doc. 96-444 Filed 1-11-96; 2:28 pm]

BILLING CODE 4410-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, January 5, 1996 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

1. The Chairman's proposal for the Fiscal Years 1996 and 1997 Staffing and Expenditure Plans, and the Reduction-In-Force related to the Fiscal Year 1996 Plans.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: January 4, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-501 Filed 1-11-96; 5:08 pm]

BILLING CODE 7020-02-P

RAILROAD RETIREMENT BOARD

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 17, 1996, 9:00 a.m.,

at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

- (1) Special Management Improvement Plan Progress Report: Fiscal Year 1995
- (2) Draft Language to Amend RRA Provision
- (3) RailTex Trac Company, Inc.—Request for Waiver of Retroactive RUIA Contributions
- (4) Organizational Structure of the Office of General Counsel
- (5) Chairmanship of the Combined Federal Campaign and U.S. Savings Bond Drives
- (6) Performance Appraisal Plans for Bureau and Office Directors Reporting to the Director of Programs

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312-751-4920.

Dated: January 8, 1996.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96-479 Filed 1-11-96; 4:21 pm]

BILLING CODE 7905-01-M

RAILROAD RETIREMENT BOARD

NOTIFICATION OF ITEM ADDED TO AGENDA: ON JANUARY 9, 1996, THE BOARD VOTED UNANIMOUSLY TO ADD ONE ITEM TO ITS AGENDA FOR THE JANUARY 17, 1996 BOARD MEETING:

7. Labor Member Truth in Budgeting Status Report.

Dated: January 9, 1996.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96-476 Filed 1-11-96; 4:21 pm]

BILLING CODE 7905-01-M

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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Permanent program and abandoned mine land reclamation plan submissions:
 Wyoming; published 12-18-95

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Cauliflower, frozen; grade standards; comments due by 1-23-96; published 11-24-95

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Class E airspace; comments due by 1-24-96; published 12-18-95

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Formulas and statements of process; registration; comments due by 1-26-96; published 11-27-95

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. 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, 202-512-2470).

H.R. 2808/P.L. 104-89

To extend authorities under the Middle East Peace Facilitation Act of 1994 until March 31, 1996, and for other

purposes. (Jan. 4, 1996; 109 Stat. 960)

H.J. Res. 153/P.L. 104-90

Making further continuing appropriations for the fiscal year 1996, and for other purposes. (Jan. 4, 1996; 110 Stat. 3)

H.R. 1358/P.L. 104-91

To require the Secretary of Commerce to convey to the Commonwealth of Massachusetts the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, Massachusetts. (Jan. 6, 1996; 110 Stat. 7)

H.R. 1643/P.L. 104-92

Making appropriations for certain activities for the fiscal year 1996, and for other purposes. (Jan. 6, 1996; 110 Stat. 16)

H.R. 1655/P.L. 104-93

Intelligence Authorization Act for Fiscal Year 1996 (Jan. 6, 1996; 109 Stat. 961)

H.J. Res. 134/P.L. 104-94

Making further continuing appropriations for the fiscal year 1996, and for other purposes. (Jan. 6, 1996; 110 Stat. 25)

H.R. 394/P.L. 104-95

To amend title 4 of the United States Code to limit State taxation of certain pension income. (Jan. 10, 1996; 109 Stat. 979)

H.R. 2627/P.L. 104-96

Smithsonian Institution Sesquicentennial Commemorative Coin Act of 1995 (Jan. 10, 1996; 109 Stat. 981)

H.R. 2203/P.L. 104-97

To reauthorize the tied aid credit program of the Export-Import Bank of the United States, and to allow the Export-Import Bank to conduct a demonstration project. (Jan. 11, 1996; 109 Stat. 984)

Last List January 3, 1996