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Federal Register

Thursday
July 18, 1996

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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

WHEN: July 23, 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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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–95–18]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final regulation (TB–95–18), which was published in the Federal Register Tuesday, June 4, 1996 (61 FR 27997). The regulation related to the determination with respect to the referendum on the merger of the Sanford and Carthage-Aberdeen, North Carolina, tobacco markets.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Rebecca Fial, Assistant to the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456; telephone number (202) 260–0151.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations issued thereunder, (7 CFR Part 29), a final rule was issued containing a determination concerning the merger of Sanford and Carthage-Aberdeen, North Carolina, to become the consolidated market of Sanford-Carthage-Aberdeen. For the 1996 and succeeding flue-cured marketing seasons, the Sanford and Carthage-Aberdeen, North Carolina, tobacco markets are to be designated as and called Sanford-Carthage-Aberdeen. The regulations at 7 CFR 29.8001 were amended to reflect the designated market.

The new designated tobacco market was added to Section 29.8001 as entry (hhh). However, the correct new market designation should be entry (lll).

Correction of Publication

Accordingly, in FR Doc. 96–13832, published June 4, 1996, amendatory item number 2 is corrected to read as follows:

§ 29.8001 [Amended]

2. In Section 29.8001, the table is amended by adding a new entry (lll) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
*	*	*	*	*
(lll) North Carolina	flue-cured	Sanford-Carthage-Aberdeen	July 5, 1996	61 FR 27997.

Dated: July 11, 1996.

William O. Coats,

Acting Director, Tobacco Division.

[FR Doc. 96–18167 Filed 7–17–96; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150–AD63

Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Delay of Effective Date and Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; delay of effective date and extension of comment period.

SUMMARY: On June 5, 1996, a final amendment to 10 CFR Part 51 was published in the Federal Register (61 FR 28467), to establish new requirements for the environmental review of applications to renew the operating licenses of nuclear power plants. The Nuclear Regulatory Commission (NRC) solicited public comment on this rule for a period of 30 days, ending July 5, 1996. Absent a determination by the NRC that the rule should be modified, based on comments received, the final rule was to be effective on August 5, 1996. In response to a request to extend the comment period, the NRC is issuing this notice extending the comment period. The effective date is also delayed to accommodate the extended comment period.

DATES: Absent a determination by the NRC that the rule should be modified, based on comments received, the final rule shall be effective on September 5, 1996. The new comment period expires August 5, 1996.

ADDRESSES: Send comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or hand deliver comments to the Office of the Secretary, One White Flint North 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays. Copies of comments received and all documents cited in the supplementary information section of 61 FR 28467 may be examined at the NRC Public Document Room, 2120 L Street NW, (Lower Level) Washington, DC, between the hours of 2:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6263; e-mail DPC@nrc.gov.

Dated at Rockville, Maryland this 12th day of July, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–18144 Filed 7–17–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AEA–05]

Amendment to Class E Airspace, Martinsville, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final Rule.

SUMMARY: This amendment modifies the Class E airspace at Martinsville, VA, to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 30 at Blue Ridge Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Frances T. Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On April 30, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Martinsville, VA, (61 FR 19000). This action would provide adequate Class E airspace for IFR operations at Blue Ridge Airport.

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 areas designations 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) modifies Class E airspace area at Martinsville, VA, to accommodate a GPS RWY 30 SIAP and for IFR operations at Blue Ridge Airport.

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 10034; 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 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 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 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 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.

* * * * *

AEA VA E5 Martinsville, VA [Revised]

Blue Ridge Airport, VA
(Lat. 36°37′51″N, Long. 80°01′06″W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Blue Ridge Airport and within 4 miles each side of the 300° bearing from the Blue Ridge Airport extending from the 6.5-mile radius to 11 miles northwest of the airport.

* * * * *

Issued in Jamaica, New York on June 13, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–18280 Filed 7–17–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28625; Amdt. No. 1740]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale

by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

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

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 12, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

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

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

** * * Effective August 15, 1996*

Sacramento, CA, Sacramento Intl, ILS RWY 34L, Amdt 5
Thomson, GA Thomson-McDuffie County, VOR/DME or GPS–A, Amdt 3
Thomson, GA Thomson-McDuffie County, NDB or GPS RWY 28, Orig
Thomson, GA Thomson-McDuffie County, NDB or GPS RWY 28, Amdt 8, CANCELLED
Willmar, MN, Willmar Muni-John L Rice Field, LOC RWY 28, Orig
La Crosse, WI, La Crosse Muni, NDB or GPS RWY 18, Amdt 18

** * * Effective September 12, 1996*

St Mary's, AK, St Mary's GPS RWY 16, Orig
St Mary's, AK, St Mary's GPS RWY 34, Orig
Angola, IN, Tri-State Steuben County, GPS RWY 5, Orig
Gary, IN, Gary Regional, NDB or GPS RWY 30, Amdt 7
Gary, IN, Gary Regional, ILS RWY 30, Amdt 4
Lafayette, IN, Aretz, GPS RWY 25, Orig
Michigan City, IN, Michigan City Muni, GPS RWY 20, Amdt 1
Peru, IN, Peru Muni, VOR or GPS RWY 1, Amdt 7
Battle Creek, MI, W.K. Kellogg, GPS RWY 5, Orig
Sturgis, MI, Kirsch Muni, NDB RWY 24, Amdt 10
Sturgis, MI, Kirsch Muni, NDB RWY 18, Amdt 5
Dayton, OH, Dayton-Wright Brothers, NDB–A, Orig
Dayton, OH, Dayton-Wright Brothers, NDB or GPS RWY 9, Amdt 7, CANCELLED
Portsmouth, OH, Greater Portsmouth Regional, GPS RWY 36, Orig
Britton, SC, Britton Muni, GPS RWY 31, Orig

** * * Effective October 10, 1996*

Anchorage, AK, Merrill Field, GPS RWY 6, Orig
West Palm Beach, FL, North Palm Beach County General Aviation, GPS RWY 26L, Orig
West Palm Beach, FL, North Palm Beach County General Aviation, GPS RWY 8R, Orig
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Norridgewock, ME, Central Maine Arpt of Norridgewock, GPS RWY 15, Orig
Norridgewock, ME, Central Maine Arpt of Norridgewock, VOR/DME RWY 3, Amdt 2
Wiscasset, ME, Wiscasset, NDB OR GPS RWY 25, Amdt 5
Wiscasset, ME, Wiscasset, GPS RWY 7, Orig
Wiscasset, ME, Wiscasset, GPS RWY 25, Orig
Booneville/Baldwyn, MS, Booneville/Baldwyn, GPS RWY 33, Orig
Clarksdale, MS, Fletcher Field, GPS RWY 18, Orig
Hammonton, NJ, Hammonton Muni, GPS RWY 3, Orig
Abilene, TX Abilene Regional, NDB OR GPS RWY 35R, Amdt 5

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Cleburne, TX, Cleburne Muni, VOR/DME OR GPS–A, Amdt 6, CANCELLED
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Corsicana, TX, C David Campbell Field-Corsicana Muni, NDB OR GPS RWY 14, Amdt 2
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Decatur, TX, Decatur Muni, VOR–DME RWY 16, Orig
Fort Worth, TX, Bourland Field, VOR/DME–A, Orig
Fort Worth, TX, Bourland Field, VOR or GPS–A, Amdt 1, CANCELLED
Mexia, TX, Mexia-Limestone County, NDB or GPS–A, Amdt 3
Waco, TX, Waco Regional, VOR or GPS RWY 14, Amdt 22
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Waco, TX, Waco Regional, ILS RWY 19, Amdt 15
Weatherford, TX, Parker County, VOR/DME–A, Orig
Weatherford, TX, Parker County, VOR or GPS RWY 35, Amdt 1 CANCELLED

[FR Doc. 96–18275 Filed 7–17–96; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28626; Amdt. No. 1741]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public

procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 12, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

* * * Effective Upon Publication

FDC date	State	City	Airport	FDC No.	SIAP
05/15/96	TX	Wichita Falls Muni	Sheppard AFB	6/2993	ITA FALLS TX. LOC BC RWY 15R, AMDT 10...
05/21/96	CA	Arcata	Arcata-Eureka	6/3166	ILS RWY 32 AMDT 29A, ILS/DME RWY 32 AMDT 1... (RESCINDED FROM TL 96-13; FR VOL 61, No. 111 DATED JUNE 7, 1996, PG 29017).
06/18/96	NE	Sidney	Sidney Muni	6/3902	VOR/DME OR TACAN RWY 30, AMDT 4...
06/28/96	AR	Texarkana	Texarkana Regional-Webb Field	6/4303	NDB OR GPS RWY 22, AMDT 11A...
06/28/96	NM	Carlsbad	Cavern City Air Terminal	6/4263	ILS RWY 3, AMDT 4...
06/28/96	PA	Pittsburgh	Pittsburgh Intl	6/4293	ILS RWY 32 AMDT 8...
06/28/96	PA	Pittsburgh	Pittsburgh Intl	6/4294	ILS RWY 28L AMDT 6...
06/28/96	TN	Memphis	Memphis Intl	6/4285	ILS RWY 36C (CAT II AND CAT III) AMDT 10A...
06/28/96	TN	Memphis	Memphis Intl	6/4286	ILS RWY 36C AMDT 10A...
06/28/96	TN	Memphis	Memphis Intl	6/4287	ILS RWY 36L AMDT 11A...
06/28/96	TN	Memphis	Memphis Intl	6/4288	ILS RWY 36L (CAT II AND CAT III) AMDT 11A...
06/28/96	TX	Fort Stockton	Fort Stockton-Pecos County	6/4290	VOR/DME OR GPS–A, AMDT 5...
06/28/96	TX	Fort Stockton	Fort Stockton-Pecos County	6/4291	GPS RWY 30, ORIG...
06/28/96	TX	Fort Stockton	Fort Stockton-Pecos County	6/4292	VOR OR GPS RWY 12, AMDT 7...
07/01/96	KS	Coffeyville	Coffeyville Muni	6/4403	VOR/DME RNAV RWY 34, AMDT 3...
07/01/96	KS	Coffeyville	Coffeyville Muni	6/4404	NDB OR GPS RWY 34, ORIG...
07/01/96	KS	Coffeyville	Coffeyville Muni	6/4405	VOR/DME RNAV OR GPS–A, AMDT 6...
07/01/96	MN	Hibbing	Chisholm-Hibbing	6/4388	LOC BC RWY 13 AMDT 10...
07/01/96	MN	Hibbing	Chisholm-Hibbing	6/4389	ILS RWY 31 AMDT 10...
07/01/96	MN	Hibbing	Chisholm-Hibbing	6/4390	VOR OR GPS RWY 13 AMDT 11B...
07/01/96	MN	Hibbing	Chisholm-Hibbing	6/4391	VOR OR GPS RWY 31 AMDT 15B...
07/02/96	GA	Swainsboro	Emanuel County	6/4421	VOR/DME OR GPS–A AMDT 2A...
07/02/96	UT	Logan	Logan-Cache	6/4430	VOR OR GPS–A AMDT 6...
07/03/96	MO	Kansas City	Kansas City Downtwon	6/4479	ILS RWY 3 AMDT 1C...
07/03/96	MO	Kansas City	Kansas City Downtown	6/4480	VOR OR GPS RWY 3 AMDT 16...
07/03/96	UT	Delta	Delta Muni	6/4448	VOR/DME OR GPS RWY 16, AMDT 1...
07/08/96	CA	Oceanside	Oceanside Muni	6/4614	VOR OR GPS–A AMDT 3A...
07/08/96	KS	Wichita	Wichita Mid-Continent	6/4477	ILS RWY 1L AMDT 2...
07/08/96	KS	Wichita	Wichita Mid-Continent	6/4478	ILS RWY 1R AMDT 16A...

FDC date	State	City	Airport	FDC No.	SIAP
07/08/96	KS	Wichita	Wichita Mid-Continent Airport	6/4595	VOR/DME RNAV OR GPS RWY 1L AMDT 1...
07/08/96	MO	Springfield	Springfield Regional	6/4591	ILS RWY 2, AMDT 16A...
07/08/96	MO	Springfield	Springfield Regional	6/4592	NDB OR GPS RWY 2, AMDT 16...
07/09/96	AZ	Tucson	Tucson Intl	6/4646	ILS RWY 11L AMDT 12...
07/09/96	CT	Windsor Locks	Bradley Intl	6/4670	VOR OR TACAN RWY 15 AMDT 2A...

[FR Doc. 96–18276 Filed 7–17–96; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28627; Amdt. No. 1742]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPS are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 12, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Aug 15, 1996*

St. Mary's, AK, St. Mary's, NDB/DME or GPS RWY 16, Amdt 1A CANCELLED
St. Mary's, AK, St. Mary's, NDB/DME RWY 16, Amdt 1A
St. Mary's, AK, St. Mary's, NDB or GPS RWY 34, Orig–A CANCELLED
St. Mary's, AK, St. Mary's, NDB RWY 34, Orig–A
Battle Creek, MI, W. K. Kellogg, VOR or TACAN or GPS RWY 5, Amdt. 19 CANCELLED
Battle Creek, MI, W, W. K. Kellogg, VOR or TACAN RWY 5, Amdt. 19
Hammonton, NJ, Hammonton Muni, VOR or GPS–B, Amdt 1 CANCELLED
Hammonton, NJ, Hammonton Muni, VOR or GPS–B Amdt 1
Port Clinton, OH, Carl R Keller Field, NDB or GPS RWY 27, Amdt 11 CANCELLED
Port Clinton, OH, Carl R Keller Field, NDB RWY 27, Amdt 11
Wiscasset, ME, Wiscasset, NDB or GPS RWY 25, Amdt 4A CANCELLED
Wiscasset, ME, Wiscasset, NDB RWY 25, Amdt 4A
Fairmont, WV, Fairmont Municipal, VOR/DME or GPS RWY 22, Amdt 4 CANCELLED
Fairmont, WV, Fairmont Municipal, VOR/DME RWY 22, Amdt 4
Riverton, WY, Riverton Regional, VOR or GPS RWY 28, Amdt 8A CANCELLED
Riverton, WY, Riverton Regional, VOR RWY 28, Amdt 8A

[FR Doc. 96–18277 Filed 7–17–96; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34–37431; File No. S7–2–95]

RIN 3235–AG25

Form BD Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to Form BD, the uniform broker-dealer registration form under the Securities Exchange Act of 1934. The primary purpose of the amendments is to implement recommended changes to the Central Registration Depository system, a computer system operated by the National Association of Securities Dealers, Inc. that maintains registration information regarding broker-dealers and their registered personnel. Specifically, the amendments are intended to facilitate retrieval of broker-dealer registration and disciplinary information through the redesigned Central Registration Depository by eliciting more precise disclosure and by reorganizing disciplinary items into related categories. The changes to the disclosure section of Form BD are consistent with changes made by the North American Securities Administrators Association, Inc. to the analogous section in Form U–4, the uniform form for registration of associated persons of a broker-dealer. The Commission also is adopting clarifying amendments to Form BD, including instructions for filing Form BD electronically with the Central Registration Depository.

DATES: Effective Date: August 19, 1996. Compliance Date: (i) July 29, 1996 for filings made on or after that date by broker-dealer participants in the redesigned Central Registration Depository pilot; (ii) September 9, 1996 for filings made on or after that date by new broker-dealer applicants; and (iii) no later than six months following receipt of notification of conversion to the redesigned Central Registration Depository system for filings made on or after that date by broker-dealers already registered as of September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Glenn J. Jessee, Special Counsel, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–10, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission (''Commission'') is adopting amendments to Form BD, the uniform application form for broker-dealer registration under the Securities Exchange Act of 1934 (''Exchange Act'').[1] The amendments are expected to provide the Commission, self-regulatory organizations (''SROs''), and state securities regulators with better information about a registrant's disciplinary history by grouping disciplinary information into related categories and by customizing the corresponding Disclosure Reporting Pages (''DRPs'') used to disclose details of the registrant's disciplinary history. The amendments also are intended to elicit more precise information about the business activities of broker-dealer applicants.

These amendments respond to certain recommended changes to the Central Registration Depository (''CRD''), a computer system operated by the National Association of Securities Dealers, Inc. (''NASD'') that maintains registration information regarding broker-dealers and their registered personnel.[2]

The redesigned system, which is expected to be operational beginning September 9, 1996, is expected to enhance its use by the Commission, SROs, and state securities regulators by providing for (i) streamlined capture and display of data; (ii) better access to information through the use of standardized and specialized computer searches; and (iii) electronic filing of uniform forms, including Forms BD, BDW, U–4, and U–5.[3] Planned

[1] 17 CFR 240.15b1–1; 17 CFR 249.501.

[2] In 1992, the Commission, as part of its ongoing effort to reduce the costs associated with broker-dealer registration, joined the CRD system and adopted amendments to the broker-dealer registration process. Those amendments required, among other things, that all broker-dealers file Form BD with the Commission through the CRD. Securities Exchange Act Release No. 31660 (Dec. 28, 1992), 58 FR 11.

Direct participation in the CRD system has improved the efficiency of the registration process by creating a comprehensive, centralized database of all registrants, and by giving the Commission more immediate access to current data in broker-dealer filings. In addition, the new system has resulted in cost savings to registrants, who no longer are required to make multiple filings with the Commission, certain SROs, and state regulators.

[3] In a separate release, the Commission is proposing amendments to Form BDW, the uniform request for broker-dealer withdrawal under the Exchange Act. *See* Securities Exchange Act Release No. 37432. The proposed amendments to Form BDW are analogous to certain amendments to Form BD being adopted today, as well as amendments to Forms U–4 and U–5 that were adopted by the North

Continued

improvements to the operation of the CRD system led to discussions among the Commission's staff, the Forms Revision and CRD Committee (''Forms Revision Committee'') of the North American Securities Administrators Association, Inc. (''NASAA''), the NASD, the New York Stock Exchange, Inc., and representatives of the securities industry, which culminated in the proposed amendments to Form BD. In its release proposing amendments to Form BD (''Proposing Release''),[4] the Commission requested comment on specific changes to Form BD and whether such changes would provide more meaningful information to the Commission and other securities regulators without increasing the regulatory burden on broker-dealers. In response to the request for comment, the Commission received two comment letters expressing general support for the proposed amendments.[5] While the comments generally supported the proposed revisions, they also suggested additional changes. After review of the comments and discussions with the NASAA Forms Revision and CRD Committee, the Commission is adopting the amendments to Form BD as proposed with minor modifications, as discussed below.

II. Description of the Amendments

The principal changes to Form BD concern amendments to current Item 7, which requests information about the disciplinary history of the applicant and its control affiliates, including information relating to statutory disqualifications,[6] other relevant history, and the applicant's financial soundness. In the Proposing Release, the Commission proposed renumbering Item 7 as Item 11 and grouping related information under four broad disclosure categories to allow for the reporting of more precise and accurate information from applicants and to facilitate enhanced retrieval of such information from the CRD.[7] The Commission also proposed amending three questions under new Item 11 relating to disclosure of criminal, regulatory, and financial information of the applicant broker-dealer and its control affiliate.[8] In addition, the Commission proposed replacing the single generic DRP with four customized DRPs to reflect more accurately the different categories of disclosures that would be required to be reported under new Item 11.[9]

Commenters supported the proposed amendments to Item 11 and the corresponding DRPs, but suggested further amendments.[10] The Association for Investment Management and Research (''AIMR''), for example, suggested that disciplinary actions taken by professional organizations, such as the American Bar Association, the American Institute of Certified Public Accountants, and the AIMR, also should be included in the ''Regulatory Action Disclosure'' section of Item 11. In AIMR's view, public sanctions taken by professional associations against their members can be an important source of information about the integrity and competence of registered broker-dealers and their personnel.

The Commission uses Item 11 to elicit information about regulatory actions that may constitute a statutory disqualification.[11] In this regard, Item 11 questions are narrowly tailored to elicit relevant information that would have a direct bearing on an applicant's request for broker-dealer registration with the Commission, the SROs, and state securities regulators. To serve the needs of state securities regulators, Item 11, which already requires applicants and their control affiliates to disclose whether the person's license as an attorney or accountant has ever been revoked or suspended, also has been expanded to include disclosure regarding the revocation or suspension of a federal contractor license. Based on discussions with the Forms Revision Committee, however, the Commission has determined that further information about public disciplinary sanctions is not necessary. Accordingly, the Commission has determined to adopt the revisions to Item 11 as originally proposed.

Other amendments to Form BD proposed by the Commission include new Item 10B, which would elicit information concerning all financial institutions or organizations, including bank holding companies, that control the applicant.[12] The Commission also proposed certain clarifying amendments to Item 8 regarding arrangements under which another party maintains the applicant's books and records, or its accounts or the accounts of its customers.[13] In addition, the Commission proposed adding to the filing instructions of Form BD an ''Explanation of Terms,'' containing definitions of the following words: charged, order, felony, misdemeanor, found, minor rule violation, and enjoined,[14] together with certain clarifying amendments to Form BD. These amendments, which are discussed in detail in the Proposing Release, are being adopted by the Commission as proposed.

The Commission also is adopting, with minor changes, proposed amendments to Schedules A, B, and C to Form BD, which require applicants to disclose the identity of their executive officers, directors, partners, and direct and indirect owners; Schedule D, which provides for disclosure of supplemental information relating to various Form BD items; and Schedule E, which provides

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American Securities Administrators Association, Inc. at its 1994 Spring Conference and that are the subject of a proposed rule change by the NASD. *See* Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Forms U–4 and U–5, Securities Exchange Act Release No. 37289 (Jun. 7, 1996), 61 FR 30272 (File No. SR-NASD–96–19).

[4] Securities Exchange Act Release No. 35224 (January 12, 1995), 60 FR 4040.

[5] *See* Letters from Michael S. Caccese, Sr. Vice President, General Counsel, Association for Investment Management and Research and Joseph P. Karpinski, Chair, State Investment Adviser Advocacy Committee (March 1, 1995); and Jacqueline H. Hallihan, President, National Regulatory Services, Inc. (February 15, 1995), to Jonathan G. Katz, Secretary, SEC.

[6] Sections 15(b)(4) and 15(b)(6) of the Exchange Act authorize the Commission to deny registration to a broker-dealer if the broker-dealer or an associated person of the broker-dealer has engaged in the activities listed in those sections. 15 U.S.C. §§ 78*o*(b)(4) and (b)(6). *See also* Section 3(a)(39) of the Exchange Act.

[7] The four disclosure categories proposed by the Commission are Criminal, Regulatory, Civil Judicial, and Financial.

[8] Under new Item 11, military court convictions would be added to Items 11A and B. Similarly, perjury and conspiracy to commit certain misdemeanor offenses would be added to Item 11B. Item 11H(1) would inquire about settlement agreements in investment-related civil actions brought against the applicant or its control affiliates by a state or foreign financial regulatory authority. In addition, Item 11I(1) would limit disclosure of bankruptcy proceedings to those that have occurred during the preceding ten years.

[9] *See supra* note 7.

[10] National Regulatory Services, Inc. (''NRS'') noted in its comment letter that instructions that direct applicants to use the reverse side of a DRP or a duplicate of a Schedule for providing additional comments do not appear appropriate for electronic filing of Form BD. While the Commission agrees that these instructions, in fact, are not appropriate for electronic filing, it is anticipated that new broker-dealer applicants will file revised Form BD in paper form with the CRD. These instructions, therefore, would be appropriate for those limited circumstances in which Form BD is filed in paper form. *See* discussion *infra* at Section IV.

[11] *See supra* note 6.

[12] Specifically, new Item 10B would require the applicant to disclose whether it is controlled, directly or indirectly, by a bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank.

[13] Items 8A (1) and (2) would be redesignated as Items 8A, 8B, and 8C. As amended, Item 8A would continue to inquire about arrangements to maintain books and records. Redesignated Items 8B and 8C would require disclosure of any arrangements to maintain the accounts, funds, or securities of the applicant, and the accounts, funds, or securities of customers of the applicant, respectively.

[14] *See* Proposing Release, at 60 FR 4042.

for registration of branch offices or other business locations of the applicant.[15]

In the Proposing Release, the Commission proposed to add to Item 3A Limited Liability Companies (''LLCs'') as a choice of legal form of organization the applicant may select. The Commission is adopting that proposal, together with corresponding instructions in Schedules A, B, and C for disclosing direct and indirect owners of a broker-dealer applicant that is a LLC.[16] In order to elicit more accurate information concerning foreign control affiliates of a broker-dealer applicant, the Commission also is adopting proposed amendments requiring an applicant to check a box on Schedules A and B to indicate if its owner is a domestic entity, an entity incorporated or domiciled in a foreign country, or an individual. In addition, the Commission is adopting amendments to delete from Schedule I of Form X–17A–5, the Focus report, questions requiring broker-dealers to disclose their affiliations, if any, with U.S. banks. As discussed above, information about such affiliations will now be disclosed under Item 10B of Form BD.[17]

III. Electronic Filing

In the Proposing Release, the Commission noted that implementation of the redesigned CRD by the NASD ultimately is intended to enable broker-dealers and their associated persons to file electronically registration and licensing information with the CRD. Because the redesigned CRD is intended to operate in an electronic environment, paper filings eventually will no longer be submitted by broker-dealer applicants in most instances, nor will data be manually entered into the CRD system by the NASD.[18] Rather, in most instances, broker-dealers will file registration and licensing information with the NASD electronically by direct link with the CRD system through a variety of methods, including standard dial-up access.[19] Electronic filings submitted by or on behalf of broker-dealers will be transmitted to the CRD either in batch transfers or in an on-line mode.[20] After the information has been transmitted electronically, the CRD system will disseminate the registration requests or updated information to the Commission, the SROs, and any states in which the broker-dealer is registering or has registered. After an electronic filing is processed, the CRD system will send the filer an electronic message or identification number indicating whether the filing has been accepted. The results of Commission, SRO, and state review of broker-dealer filings also will be handled electronically and will be transmitted directly to the broker-dealer applicant via the redesigned CRD system.

The Commission is adopting as part of the amendments to Form BD instructions for filing Form BD electronically with the redesigned CRD system. A letter from one of the commenters, National Regulatory Services, Inc., addressed electronic filing. While this commenter supported electronic filing, it also expressed concern about timely access to, and the availability of, the interfacing specifications of the new CRD system. The Commission expects the NASD to work with service bureaus and other interested parties to ensure that the redesigned CRD will be hospitable to service bureaus seeking to file for their clients through electronic means.

IV. Effective and Compliance Dates

The filing of revised Form BD is intended to coincide with the implementation of the redesigned CRD, which will be conducted by the NASD in phases. With the voluntary participation of several NASD member firms and one service bureau, the NASD began a two-month test of the redesigned CRD on May 20, 1996. During this period, the NASD will test the software that will enable broker-dealers to file Forms BD and BDW (and other uniform forms) with the redesigned CRD system and carry out other quality assurance testing. The NASD anticipates that on July 29, 1996, broker-dealers participating in the test will begin filing all of their registration and licensing information electronically with the redesigned CRD on a pilot basis.

On September 9, 1996, following completion of the pilot, the NASD plans to implement Phase I of the transition to the redesigned CRD. During Phase I, the NASD will convert broker-dealer registration information contained in the old CRD system to the redesigned CRD. Also during Phase I, it is anticipated that the NASD will enter manually initial broker-dealer application information submitted on revised Form BD into the redesigned CRD system. During Phase II of the implementation process, the Commission, the SROs, and state securities regulators will be provided direct access to broker-dealer registration information contained in the redesigned CRD system. Prior to Phase II implementation, the Commission, the SROs, and state securities regulators will continue to gain access to broker-dealer registration information, including information filed on revised Form BD, through the old CRD system.

Broker-dealers participating in the redesigned CRD pilot will begin to use revised Form BD on July 29, 1996. The amendments to Form BD become effective September 9, 1996 for all other broker-dealers. Thus, all applicants filing for initial broker-dealer registration on or after September 9, 1996 will be required to file revised Form BD in accordance with the instructions contained therein. It is anticipated that broker-dealers registered with the Commission as of September 9, 1996 will be required to file revised Form BD only after their registration information contained in

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[15] One commenter, NRS, addressed the proposed amendments to the Schedules to Form BD. While NRS supported the proposed amendments, it also suggested that the Commission provide additional clarifying instructions to Item 6 of Schedule B (ownership codes applicable to indirect owners) and Item 11 of Schedule E (branch office or other business locations). In response to NRS's comments, the Commission is adding clarifying instructions to these items. For example, Item 12 of Schedule E, previously proposed as Item 11, now will include an instruction for broker-dealer applicants to check the appropriate box(es) if the branch or other business location is (i) registering with the NASD or (ii) registering or reporting with a state.

[16] Schedule A (direct owners) of Form BD will now include the following instruction:

(d) in the case of an applicant that is a LLC, (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

Schedule B of Form BD will now include a similar instruction for indirect owners.

[17] *See* Proposing Release, at 40 FR 4042.

[18] Applicant broker-dealers seeking to register with the Commission and the various states currently file a single Form BD with the NASD, which manually enters the information into the CRD system and then electronically forwards the information to the Commission and the appropriate states for review.

[19] The NASD has developed software that will support personal computer entry of broker-dealer registration information. This software may be obtained from the NASD pursuant to a subscription agreement.

[20] The redesigned CRD will provide for batch filings of registration and licensing information. Under the redesigned CRD, broker-dealers will be able to download data from their internal data bases into programmed formats for the CRD to process. In this regard, broker-dealers or persons acting on their behalf, such as service bureaus, will be able to create several CRD filings *off-line* and, when ready, transmit them collectively to the CRD. In comparison, in an *on-line* mode, broker-dealers or persons acting on their behalf, such as service bureaus, will enter information directly into the redesigned CRD through a windows-based interactive session.

the old CRD has been converted to the redesigned CRD system.[21]

V. Effects on Competition and Regulatory Flexibility Act Considerations

Sections 23(a)(2) of the Exchange Act[22] requires that the Commission, when adopting rules under the Exchange Act, consider the anticompetitive effects of those rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that the adoption of the amendments to Form BD and Schedule I of Form X–17A–5, the FOCUS report, will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA''), regarding the revisions to Form BD and Schedule I of Form X–17A–5, the FOCUS report in accordance with 5 U.S.C. 604. The FRFA notes the initial costs of operational and procedural changes that may be necessary to comply with the amendments to Form BD and Schedule I of Form X–17A–5. The FRFA also notes that adoption of the amendments to Form BD and Schedule I of Form X–17A–5 not only will provide benefits to securities regulators by improving their ability to identify and flag problem brokers through the use of standardized and specialized computer searches, but also will ease the burden of registration by future registrants.

A copy of the FRFA may be obtained from Glenn J. Jessee, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–10, Washington, DC 20549, (202) 942–0073.

VI. Paperwork Reduction Act Analysis

The amendments to Form BD include ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (''PRA'') (44 U.S.C. Section 3501 *et seq.*). The Commission submitted the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with PRA requirements in effect at that time. OMB has approved the amendments to Form BD and has assigned Form BD OMB Number 3235–0012, with an expiration date of March 31, 1998.

The amendments to Form BD are expected to provide securities regulators with better information about a registrant's disciplinary history by grouping disciplinary information into related categories and by customizing the corresponding DRPs used to disclose details of the registrant's disciplinary history. The amendments also are intended to elicit more precise information about the business activities of broker-dealer applicants.[23]

As discussed above, the amendments to Form BD respond to certain recommended changes to the CRD system that have led to its redesign. The redesigned CRD system is expected to enhance its use by securities regulators and will allow broker-dealers to file Form BD and other uniform registration forms electronically. Because the redesigned CRD is intended to operate in an electronic environment, paper filings eventually will no longer be submitted by broker-dealer applicants in most instances, nor will data be manually entered into the CRD system by the NASD. Rather, broker-dealers will file registration and licensing information with the NASD electronically by direct link with the CRD system through standard dial-up access and other electronic means.

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[21] Until a broker-dealer's existing registration information has been converted to the redesigned CRD system, it is expected that the broker-dealer will continue to file amendments to its registration on Form BD (as revised November 16, 1992) in paper form with the old CRD. *See* discussion of electronic filing and proposed amendments to Exchange Act rules for filing Form BD, Securities Exchange Act Release No. 37432.

[22] 15 U.S.C. 78w(a)(2).

[23] The Commission uses the information disclosed by applicants in Form BD to: (i) determine whether broker-dealer applicants meet the standards for registration set forth in the provisions of the Exchange Act; (ii) develop and maintain a central information resource where members of the public may obtain relevant, current information about broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers, and where the Commission and other securities regulators may obtain information for investigatory purposes; and (iii) develop statistical information concerning broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers.

Broker-dealers already are required pursuant to Rule 15b1–1 [24] under the Exchange Act to file for registration on Form BD and, pursuant to Rule 15b3–1(b), [25] to promptly file an amendment to Form BD if any information contained therein becomes inaccurate. The amendments to Form BD primarily relate to the disciplinary history sections. Thus, unless a broker-dealer has an extensive disciplinary history, the amendments to Form BD, as adopted, will not impose any significant additional recordkeeping or other compliance requirement on broker-dealers.[26] The Commission is of the view, however, that the benefit to regulators in obtaining more precise information regarding a broker-dealer's activities and disciplinary history will outweigh the burden on broker-dealers imposed by this additional reporting requirement. Moreover, the Commission expects that when the redesigned CRD system is fully implemented, electronic filing will further reduce the regulatory burden on broker-dealers for filing Form BD and amendments thereto.

VII. List of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities, Broker-Dealers

Statutory Basis and Text of Final Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

2. By revising Form BD (referenced in § 249.501) to read as set forth below:

Note: Form BD does not and the revisions will not appear in the Code of Federal Regulations. Revised Form BD is attached as an Appendix to this document.

3. By amending Schedule I to Form X–17A–5 (referenced in § 249.617) by removing Specific Instructions 19a, b and c and Question 19, redesignating Questions 20 through 24 as Questions 19 through 23, and revising newly designated Question 19 to read as follows:

Note: Form X–17A–5 does not and the revisions will not appear in the Code of Federal Regulations.

Form X–17A–5

* * * * *

Schedule I

* * * * *

19. Respondent is an affiliate or subsidiary of a foreign broker-dealer.

* * * * *

By the Commission.

Dated: July 12, 1996.

Jonathan G. Katz,

Secretary.

BILLING CODE 8010–01–P

Appendix

[24] 17 CFR 240.15b1–1.

[25] 17 CFR 240.15b3–1(b).

[26] It is expected that a broker-dealer would be required to file new information solicited by revised Form BD at the time it files its first amendment to Form BD after its registration information has been converted to the redesigned CRD, but, in any event, no later than six months from its date of conversion to the redesigned CRD. See discussion of proposed amendments to Exchange Act rules for filing Form BD, Securities Exchange Act Release No. 37432.

Form BD

OMB APPROVAL
OMB Number: 3235-0012
Expires: . . . . . March 31, 1998
Estimated average
burden hours per form: 3.00

Uniform Application for Broker-Dealer Registration

NOTE: Form BD does not and the revisions will not appear in the Code of Federal Regulations. Pages are numbered consecutively with the release.

FORM BD INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form BD is the Uniform Application for Broker-Dealer Registration. Broker-Dealers must file this form to register with the Securities and Exchange Commission, the *self-regulatory organizations*, and *jurisdictions* through the Central Registration Depository ("CRD") system, operated by the NASD. These instructions apply to filing Form BD electronically with the CRD system or by paper.
2. **UPDATING** – By law, the *applicant* must promptly update Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason.
3. **CONTACT EMPLOYEE** – The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.
4. **GOVERNMENT SECURITIES ACTIVITIES**
   A. Broker-dealers registered or *applicants* applying for registration under Section 15(b) of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 2B.
   B. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, answer "yes" to Item 2C if conducting only a government securities business.
   C. Broker-dealers registered under Section 15(b) of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 2D.

NOTE: Broker-dealers registered under Section 15C may register under Section 15(b) by filing an amendment to Form BD and answering "yes" to Items 2A and 2D. By doing so, broker-dealer expressly consents to withdrawal of broker-dealer's registration under 15C of the Exchange Act.

5. **FEDERAL INFORMATION LAW AND REQUIREMENTS** – The Securities Exchange Act of 1934, Sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from *applicants* for registration as a broker or dealer (and *persons* associated with *applicants*). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number information, which aids in identifying the *applicant*, is voluntary. *Applicants* are not required to file Form BD with the SEC if the form does not have a current OMB number.

B. PAPER FILING INSTRUCTIONS

1. **FORMAT**
   A. Attach an Execution Page (Page 1) with original manual signatures to the initial Form BD filing and each amendment to the form. Complete all amended pages in full and, except for Schedule C, circle the number of the item being changed. Amendments to Schedules C, D and the Disclosure Reporting Pages also must be accompanied by an Execution Page (Page 1). (Schedules A & B are amended by filing Schedule C.) Amendments to Schedule E may be submitted without an execution page.
   B. Type all information.
   C. Give the name of the broker-dealer and date on each page.
   D. Use only the current version of Form BD and its Schedules or a reproduction of them.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP(BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). Attach a copy of the fully completed DRP(BD) or DRP(U-4) previously submitted. If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the items on the *applicant's* appropriate DRP(BD).
3. **SCHEDULES A, B AND C** – File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B. Individuals not required to file a Form U-4 (individual registration) with the CRD system who are listed on Schedules A, B, or C must attach page 2 of Form U-4. The applicant broker-dealer must be listed in Form U-4 Item 20A or 20B. Signatures are not required.
4. **SCHEDULE D** – Schedule D provides additional space for explaining answers to Item 1C(2), and "yes" answers to Items 5, 7, 8, 9, 10, 12, and 13 of Form BD.

C. ELECTRONIC FILING INSTRUCTIONS

1. **FORMAT**
   A. A full paper Form BD is required when the *applicant* is filing with the CRD for the first time. In addition, some *jurisdictions* may require a separate paper filing of Form BD. The *applicant* should contact the appropriate *jurisdiction(s)* for specific filing requirements.
   B. Items 1-13 must be answered and all fields requiring a response must be completed before the filing will be accepted.
   C. *Applicant* must complete the execution screen certifying that Form BD and amendments thereto have been executed properly and that the information contained therein is accurate and complete.
   D. To amend information, *applicant* must update the appropriate Form BD screens.
   E. A paper copy, with original manual signatures, of the initial Form BD filing and amendments to Disclosure Reporting Pages (DRPs BD) must be retained by the *applicant* and be made available for inspection upon a regulatory request.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete the *control affiliate* name and CRD number of the *applicant's* appropriate DRP(BD). Details for the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the questions and complete all fields requiring a response on the *applicant's* appropriate DRP(BD) screen.

3. **DIRECT AND INDIRECT OWNERS** – *Applicant* must complete the Direct Owners and Executive Officers screen and the Indirect Owners screen when filing an initial application. Amend these screens when changes in ownership occur. *Control affiliates* who are listed on the Direct Owners and Executive Officers screen and the Indirect Owners screen but that are not required to file a Form U-4 (individual registration) with the CRD must complete the Personal Data screen, the Residential History screen and the Employment and Personal History screen of Form U-4. The *applicant* broker-dealer must be listed on the Other Business screen of Form U-4.

The CRD mailing address for questions and correspondence is:

NASAA/NASD CENTRAL REGISTRATION DEPOSITORY
P.O. BOX 9401
GAITHERSBURG, MD 20898-9401

EXPLANATION OF TERMS

(The following terms are italicized throughout this form.)

1. **GENERAL**

APPLICANT – The broker-dealer applying on or amending this form.

CONTROL – The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)

JURISDICTION – A state, the District of Columbia, the Commonwealth of Puerto Rico, or any subdivision or regulatory body thereof.

PERSON – An individual, partnership, corporation, trust, or other organization.

SELF-REGULATORY ORGANIZATION – Any national securities or commodities exchange or registered securities association, or registered clearing agency.

2. **FOR THE PURPOSE OF ITEM 5 AND SCHEDULE D**

SUCCESSOR – An unregistered entity that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a registered predecessor broker-dealer, who ceases its broker-dealer activities. [See Securities Exchange Act Release No. 31661 (December 28, 1992), 58 FR 7 (January 4, 1993)]

3. **FOR THE PURPOSE OF ITEM 11 AND THE CORRESPONDING DISCLOSURE REPORTING PAGES (DRPs)**

CONTROL AFFILIATE – A person named in Items 1A, 9 or in Schedules A, B or C as a control person or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by, the applicant, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.

INVESTMENT OR INVESTMENT-RELATED – Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).

INVOLVED – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

FOREIGN FINANCIAL REGULATORY AUTHORITY – Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment-related activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

PROCEEDING – Includes a formal administrative or civil action initiated by a governmental agency, self-regulatory organization or a foreign financial regulatory authority; a felony criminal indictment or information (or equivalent formal charge); or a misdemeanor criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

CHARGED – Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

ORDER – A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an order.

FELONY – For jurisdictions that do not differentiate between a felony and a misdemeanor, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

MISDEMEANOR – For jurisdictions that do not differentiate between a felony and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

FOUND – Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

MINOR RULE VIOLATION – A violation of a self-regulatory organization rule that has been designated as "minor" pursuant to a plan approved by the U.S. Securities and Exchange Commission. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. (Check with the appropriate self-regulatory organization to determine if a particular rule violation has been designated as "minor" for these purposes).

ENJOINED – Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

FORM BD PAGE 1 (Execution Page) (REV. 11/95)	**UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION**	OFFICIAL USE	OFFICIAL USE ONLY
	Date: _____ SEC File No.: 8- _____ Firm CRD No.: _____		

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of *applicant*:
   - A. Full name of *applicant* (if sole proprietor, state last, first and middle name):
     _____
   - B. IRS Empl. Ident. No.:
     _____
   - C. (1) Name under which broker-dealer business primarily is conducted, if different from Item 1A.
     _____
     (2) List on Schedule D, Page 1, Section I any other name by which the firm conducts business and where it is used.
   - D. If this filing makes a name change on behalf of the applicant, enter the previous name and specify whether the name change is of the ☐ *applicant* name (1A) or ☐ business name (1C):
     Please check above. _____
   - E. Firm main address: (Do not use a P.O. Box)
     _____
     (Number and Street) (City) (State/Country) (Zip+4/Postal Code)

     Branch offices or other business locations must be reported on Schedule E.
   - F. Mailing address, if different:
     _____
   - G. Business Telephone Number:
     _____ _____
     (Area Code) (Telephone Number)
   - H. Contact Employee:
     _____ _____ _____
     (Name and Title) (Area Code) (Telephone Number)

EXECUTION:

For the purposes of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and *applicant* hereby certify that the *applicant* is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the *applicant* in said State(s), upon whom may be served any notice, process, or pleading in any action or *proceeding* against the *applicant* arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the *applicant* hereby consents that any such action or *proceeding* against the *applicant* may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if *applicant* were a resident in said State(s) and had lawfully been served with process in said State(s).

The *applicant* consents that service of any civil action brought by or notice of any *proceeding* before the Securities and Exchange Commission or any *self-regulatory organization* in connection with the *applicant's* broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the *applicant's* contact employee at the main address, or mailing address if different, given in Items 1E and 1F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said *applicant*. The undersigned and *applicant* represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and *applicant* further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

_____ _____
Date (MM/DD/YYYY) Name of Applicant

By: _____ _____
Signature Print Name and Title

Subscribed and sworn before me this _____ day of _____, _____ by _____
Year Notary Public

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
To amend, circle items being amended. Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

FORM BD
PAGE 2
(REV. 11/95)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

2. Indicate by checking the appropriate box(es) each governmental authority, organization, or *jurisdiction* in which the *applicant* is registered or registering as a broker-dealer.

SECURITIES AND EXCHANGE COMMISSION

If *applicant* is registered or registering with the SEC, check here and answer Items 2A through 2D below. ☐

	YES	NO
A. Is *applicant* registered or registering as a broker-dealer under Section 15(b) or Section 15B of the Securities Exchange Act of 1934?	☐	☐
B. Is *applicant* registered or registering as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer?	☐	☐
C. Is *applicant* registered or registering solely as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934?	☐	☐
Do not answer "yes" to Item 2C if applicant answered "yes" to Item 2A or Item 2B.		
D. Is *applicant* ceasing its activities as a government securities broker or dealer?	☐	☐

If applicant answers "yes" to Items 2A and 2D, applicant expressly consents to the withdrawal of its registration as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934. See "Instructions."

SRO

☐ ASE ☐ BSE ☐ CBOE ☐ CHX ☐ CSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PSE ☐ OTHER *(specify)* _____

JURISDICTION

☐ Alabama	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ Alaska	☐ Idaho	☐ Minnesota	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Mississippi	☐ Ohio	☐ Vermont
☐ Arkansas	☐ Indiana	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ California	☐ Iowa	☐ Montana	☐ Oregon	☐ Washington
☐ Colorado	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ West Virginia
☐ Connecticut	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ Wisconsin
☐ Delaware	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wyoming
☐ District of Columbia	☐ Maine	☐ New Jersey	☐ South Carolina	
☐ Florida	☐ Maryland	☐ New Mexico	☐ South Dakota	
☐ Georgia	☐ Massachusetts	☐ New York	☐ Tennessee	

3. A. Indicate legal status of *applicant:*

☐ Corporation ☐ Sole Proprietorship ☐ Other *(specify)* _____
☐ Partnership ☐ Limited Liability Company

B. Month *applicant's* fiscal year ends: _____

C. If other than a sole proprietor, indicate date and place *applicant* obtained its legal status (i.e., state or country where incorporated, where partnership agreement was filed, or where *applicant* entity was formed):

State/Country of formation: _____ Date of formation: _____ (MM/DD/YYYY)

Schedule A and, if applicable, Schedule B must be completed as part of all initial applications. Amendments to these schedules must be provided on Schedule C.

4. If *applicant* is a sole proprietor, state full residence address and Social Security Number.

Social Security Number: __ __ __ – __ __ – __ __ __ __

_____
(Number and Street) (City) (State/Country) (Zip+4/Postal Code)

	YES	NO
5. Is *applicant* at the time of this filing *succeeding* to the business of a currently registered broker-dealer? *Do not report previous successions already reported on Form BD. If "Yes," complete appropriate items on Schedule D, Page 1, Section III.*	☐	☐
6. Does *applicant* hold or maintain any funds or securities or provide clearing services for any other broker or dealer?	☐	☐
7. Does *applicant* refer or introduce customers to any other broker or dealer? *If "Yes," complete appropriate items on Schedule D, Page 1, Section IV.*	☐	☐

FORM BD
PAGE 3
(REV. 11/95)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

	YES	NO
8. Does *applicant* have any arrangement with any other *person*, firm, or organization under which:		
A. any books or records of *applicant* are kept or maintained by such other *person*, firm or organization?	☐	☐
B. accounts, funds, or securities of the *applicant* are held or maintained by such other *person*, firm, or organization?	☐	☐
C. accounts, funds, or securities of customers of the *applicant* are held or maintained by such other *person*, firm or organization?	☐	☐
For purposes of 8B and 8C, do not include a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).		
If "Yes" to any part of Item 8, complete appropriate items on Schedule D, Page 1, Section IV.		
9. Does any *person* not named in Item 1 or Schedules A, B, or C, directly or indirectly:		
A. *control* the management or policies of the *applicant* through agreement or otherwise?	☐	☐
B. wholly or partially finance the business of *applicant*?	☐	☐
Do not answer "yes" to 9B if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; 2) credit extended in the ordinary course of business by suppliers, banks, and others; or 3) a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1).		
If "Yes" to any part of Item 9, complete appropriate items on Schedule D, Page 1, Section IV.		
10. A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?	☐	☐
If "Yes" to Item 10A, complete appropriate items on Schedule D, Page 2, Section V.		
B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?	☐	☐
If "Yes" to Item 10B, complete appropriate items on Schedule D, Page 3, Section VI.		
11. Use the appropriate DRP for providing details to "yes" answers to the questions in Item 11. Refer to the Explanation of Terms section of Form BD Instructions for explanations of italicized terms.		
CRIMINAL DISCLOSURE		
A. In the past ten years has the *applicant* or a *control affiliate:*		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony?*	☐	☐
(2) been *charged* with any *felony?*	☐	☐
B. In the past ten years has the *applicant* or a *control affiliate:*		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving:* investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
(2) been *charged* with a *misdemeanor* specified in 11B(1)?	☐	☐
REGULATORY ACTION DISCLOSURE		
C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
(2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?	☐	☐
(3) *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?	☐	☐
(5) imposed a civil money penalty on the *applicant* or a *control affiliate*, or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?	☐	☐

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Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

REGULATORY ACTION DISCLOSURE

	YES	NO
D. Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority:*		
(1) ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	☐	☐
(2) ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	☐	☐
(3) ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) in the past ten years, entered an *order* against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?	☐	☐
(5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order,* prevented it from associating with an *investment-related* business or restricted its activities?	☐	☐
E. Has any *self-regulatory organization* or commodities exchange ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
(2) *found* the *applicant* or a *control affiliate* to have been involved in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?	☐	☐
(3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	☐	☐
F. Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	☐	☐
G. Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 11C, D, or E?	☐	☐

CIVIL JUDICIAL DISCLOSURE

H. (1) Has any domestic or foreign court:		
(a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?	☐	☐
(b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?	☐	☐
(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or *control affiliate* by a state or *foreign financial regulatory authority*?	☐	☐
(2) Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H(1)?	☐	☐

FINANCIAL DISCLOSURE

I. In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:		
(1) has been the subject of a bankruptcy petition?	☐	☐
(2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	☐	☐
J. Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant?*	☐	☐
K. Does the *applicant* have any unsatisfied judgments or liens against it?	☐	☐

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(REV. 11/95)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

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12. Check types of business engaged in (or to be engaged in, if not yet active) by *applicant.* Do not check any category that accounts for (or is expected to account for) less than 1% of annual revenue from the securities or investment advisory business.

A. Exchange member engaged in exchange commission business other than floor activities	☐ EMC
B. Exchange member engaged in floor activities	☐ EMF
C. Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
D. Broker or dealer retailing corporate equity securities over-the-counter	☐ BDR
E. Broker or dealer selling corporate debt securities	☐ BDD
F. Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
G. Mutual fund underwriter or sponsor	☐ MFU
H. Mutual fund retailer	☐ MFR
I. 1. U.S. government securities dealer	☐ GSD
2. U.S. government securities broker	☐ GSB
J. Municipal securities dealer	☐ MSD
K. Municipal securities broker	☐ MSB
L. Broker or dealer selling variable life insurance or annuities	☐ VLA
M. Solicitor of time deposits in a financial institution	☐ SSL
N. Real estate syndicator	☐ RES
O. Broker or dealer selling oil and gas interests	☐ OGI
P. Put and call broker or dealer or option writer	☐ PCB
Q. Broker or dealer selling securities of only one issuer or associate issuers (other than mutual funds)	☐ BIA
R. Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐ NPB
S. Investment advisory services	☐ IAD
T. 1. Broker or dealer selling tax shelters or limited partnerships in primary distributions	☐ TAP
2. Broker or dealer selling tax shelters or limited partnerships in the secondary market	☐ TAS
U. Non-exchange member arranging for transactions in listed securities by exchange member	☐ NEX
V. Trading securities for own account	☐ TRA
W. Private placements of securities	☐ PLA
X. Broker or dealer selling interests in mortgages or other receivables	☐ MRI
Y. Broker or dealer involved in a networking, kiosk or similar arrangement with a:	
1. bank, savings bank or association, or credit union	☐ BNA
2. insurance company or agency	☐ INA
Z. Other *(give details on Schedule D, Page 1, Section II)*	☐ OTH

	YES	NO
13. A. Does *applicant* effect transactions in commodity futures, commodities or commodity options as a broker for others or as a dealer for its own account?	☐	☐
B. Does *applicant* engage in any other non-securities business?	☐	☐

If "yes," describe each other business briefly on Schedule D, Page 1, Section II.

CRIMINAL DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Items 11A or 11B*** of Form BD;

Check ☑ item(s) being responded to:

11A In the past ten years has the *applicant* or a *control affiliate*:

- ☐ (1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
- ☐ (2) been *charged* with any *felony*?

11B In the past ten years has the *applicant* or a *control affiliate*:

- ☐ (1) been convicted or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?
- ☐ (2) been *charged* with a *misdemeanor* specified in 11B(1)?

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part 1 of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records. If more than one *control affiliate*, complete a separate DRP for each one.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be provided to the CRD if not previously submitted.

PART I

NAME OF APPLICANT		APPLICANT CRD NUMBER
NAME OF CONTROL AFFILIATE (if applicable)	Is control affiliate in an investment-related business? ☐ Yes ☐ No	CONTROL AFFILIATE CRD NUMBER

PART II

1. Formal charge(s) were brought in:

Court: *(Name of Federal, Military, State or Foreign Court)*	Location of Court: *(City or County and State or Country)*	Docket / Case Number:

2. Charge Detail Disclosure: (Continue on additional Criminal Disclosure Reporting Page BD if more than three charges arise out of the same event.)

Chg #	Formal Charge(s) Description:	Charge Date (MM/DD/YYYY)	Number of Counts	Charge Type (check one only)		Plea (Guilty, Not Guilty, etc.)	Charge Is Currently: (check one only)	Appeal Date (MM/DD/YYYY)	Product Type (if charge is investment-related)
				Misdemeanor	Felony				
1.							☐ Pending ☐ Final ☐ On Appeal ☐ Pre-Trial Intervention		
2.							☐ Pending ☐ Final ☐ On Appeal ☐ Pre-Trial Intervention		
3.							☐ Pending ☐ Final ☐ On Appeal ☐ Pre-Trial Intervention		

IF FINAL, ON APPEAL, OR PRE-TRIAL INTERVENTION, COMPLETE ITEMS 3 AND 4. FOR EACH CHARGE THAT IS PENDING, COMPLETE ONLY ITEM 4.

3. Disposition Detail Disclosure: (Continue on another Criminal Disclosure Reporting Page BD if more than three charges.)

Chg #	Disposition Type: (Convicted, Acquitted, Dismissed, Pre-Trial Intervention, etc.)	Disposition Date: (MM/DD/YYYY)	Disposition Detail: Sentence / Penalty (if applicable)	Duration: (if sentence, suspension, probation, etc.)	Start Date: (MM/DD/YYYY)	Penalty/Fine Amount: (if applicable)	Date Paid: (MM/DD/YYYY)
1.							
2.							
3.							

4. Provide a brief summary of circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the charge(s) occurred. (Use reverse side of this sheet for additional comments if necessary.)

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REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11C, 11D, 11E, 11F or 11G*** of Form BD;

Check ☑ item(s) being responded to:

11C Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:
- ☐ (1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) *found* the *applicant* or a *control affiliate* to have been involved in a violation of its regulations or statutes?
- ☐ (3) *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?
- ☐ (5) imposed a civil money penalty on the *applicant* or a *control affiliate*, or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?

11D Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority*:
- ☐ (1) ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?
- ☐ (2) ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?
- ☐ (3) ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) in the past ten years, entered an *order* against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?
- ☐ (5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order*, prevented it from associating with an *investment-related* business or restricted its activities?

11E Has any *self-regulatory organization* or commodities exchange ever:
- ☐ (1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?
- ☐ (3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

11F ☐ Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

11G ☐ Is the *applicant* or a *control affiliate* now the subject of any regulatory proceeding that could result in a "yes" answer to any part of 11C, D, or E?

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part 1 of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records. If more than one *control affiliate*, complete a separate DRP for each one.

One event may result in more than one affirmative answer within each of the above items. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details to each action on a separate DRP.

PART I

NAME OF APPLICANT	APPLICANT CRD NUMBER
NAME OF CONTROL AFFILIATE (if applicable)	CONTROL AFFILIATE CRD NUMBER

PART II

1. Regulatory Action initiated by: *(Name the regulator, foreign financial regulatory authority, SRO or commodities exchange, etc.)* | 2. Regulatory Action Type:

3. Date Initiated: MM / DD / YYYY | 4. Docket / Case Number: | 5. Employing Firm when events occurred:

6. Product Type(s):

7. Describe the allegations related to this regulatory action: (Use reverse side of this sheet for additional comments if necessary.)

8. Is regulatory action currently: *(check one)* ☐ Pending ☐ On Appeal ☐ Final | 9. If on appeal, regulatory action appealed to: *(SEC, SRO, U.S. Court of Appeals, etc.)* | 10. If on appeal, date filed: MM / DD / YYYY

IF FINAL OR ON APPEAL, COMPLETE ALL ITEMS BELOW. FOR PENDING ACTIONS, COMPLETE ITEM 19 ONLY.

11. How was the matter resolved? *(Settled, Consent, etc.)* | 12. Resolution Date: MM / DD / YYYY | 13. Sanctions: *(Suspended, Censured, Barred, Requalification, etc.)*

14. If Suspended, Enjoined or Barred: ▶ | Is suspension/injunction/bar of a fixed duration? ☐ Yes ☐ No (If No, provide details in Item 19) | Suspension/Injunction/Bar Start Date: MM / DD / YYYY | Suspension/Injunction/Bar Duration: | Suspension/Injunction/Bar capacity affected: *(General Securities Principal, Financial & Operations Principal, Options Trading, etc.)*

15. If requalification by exam/ retraining was a condition of the sanction: ▶ | Is requalification/retraining time-related? ☐ Yes ☐ No | If Yes, length of time given to requalify/retrain: *(If No, provide details in Item 19)* | Type of Exam required for requalification: | Has condition been satisfied? ☐ Yes ☐ No

			MM / DD / YYYY
16. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation: *(Fill in amount on appropriate line)* ▶	Penalty/Fine:	$	Date Paid: / /
	Restitution:	$	Date Paid: / /
	Disgorgement:	$	Date Paid: / /
	Other:	$	Date Paid: / /
17. Was the control affiliate named in Part I required to pay any part of the monetary items disclosed in 16? ☐ Yes ☐ No *(If "yes," fill in amount on appropriate line)* ▶	Penalty/Fine:	$	MM / DD / YYYY Date Paid: / /
	Restitution:	$	Date Paid: / /
	Disgorgement:	$	Date Paid: / /
	Other:	$	Date Paid: / /

18. Was payment of all or any part of a monetary award, penalty or fine waived? ☐ Yes ☐ No If yes, provide details of Waiver in 19 below.

19. Provide summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (Use reverse side of this sheet for additional comments if necessary.)

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CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11H*** of Form BD;

Check ☑ item(s) being responded to:

11H(1) Has any domestic or foreign court:

- ☐ (a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?
- ☐ (b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?
- ☐ (c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or a *control affiliate* by a state or *foreign financial regulatory authority*?

11H(2) ☐ Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H?

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part 1 of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records. If more than one *control affiliate*, complete a separate DRP for each one.

One event may result in more than one affirmative answer to the above items. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs..

PART I

NAME OF APPLICANT	APPLICANT CRD NUMBER
NAME OF CONTROL AFFILIATE (if applicable)	CONTROL AFFILIATE CRD NUMBER

PART II

1. Court Action initiated by: *(Name the Regulator, foreign financial regulatory authority, SRO, commodities exchange, Agency, Firm, Private Plaintiff, etc.)*

2. Relief Sought: *(Temporary Restraining Order, Mandatory Injunction, Preliminary Injunction, etc.)*

3. Filing Date of Court Action: MM / DD / YYYY

4. Product Type(s):

5. Court formal action was brought in: *(Name of Federal, Military, State or Foreign Court)*

6. Location of Court: *(City or County and State or Country)*

7. Docket / Case Number:

8. Control Affiliate Employing Firm when events occurred (if applicable):

9. Describe Allegations relating to this court action: (Use reverse side of this sheet for additional comments if necessary.)

10. Is action currently: *(check one)* ☐ Pending ☐ On Appeal ☐ Final

11. If pending, date notice was served: MM / DD / YYYY

12. If on appeal, action appealed to: *(provide name of court)*

13. If on appeal, date filed: MM / DD / YYYY

IF FINAL OR ON APPEAL, COMPLETE ALL ITEMS BELOW. FOR PENDING ACTIONS, COMPLETE ITEM 21 ONLY.

14. How was the matter resolved? *(Settled, Consent, Judgment Rendered, etc.)*

15. Resolution Date: MM / DD / YYYY

16. Sanctions: *(Suspended, Censured, etc.)*

17. If Suspended, Enjoined or Barred: ▶

Is suspension/injunction/bar of a fixed duration? ☐ Yes ☐ No (If No, provide details in Item 21)

Suspension/Injunction/Bar Start Date: MM / DD / YYYY

Suspension/Injunction/Bar Duration:

Suspension/Injunction/Bar capacity affected: *(General Securities Principal, Financial & Operations Principal, Options Trading, etc.)*

18. If requalification by exam is/was a condition of the disposition: ▶

Is requalification time-related? ☐ Yes ☐ No

If Yes, length of time given to requalify: *(If No, provide details in Item 21)*

Type of exam required for requalification:

Has condition been satisfied? ☐ Yes ☐ No

19. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation: *(Fill in amount on appropriate line)* ▶

		MM / DD / YYYY
Penalty/Fine:	$	Date Paid: / /
Restitution:	$	Date Paid: / /
Disgorgement:	$	Date Paid: / /
Other:	$	Date Paid: / /

20. Was the control affiliate named in Part I required to pay any part of the monetary items disclosed in 19? ☐ Yes ☐ No ▶ *(If "yes," fill in amount on appropriate line)*

		MM / DD / YYYY
Penalty/Fine:	$	Date Paid: / /
Restitution:	$	Date Paid: / /
Disgorgement:	$	Date Paid: / /
Other:	$	Date Paid: / /

21. Provide a brief summary of circumstances related to action(s), allegation(s), disposition(s) and/or finding(s) disclosed above. (Use reverse side of this sheet for additional comments if necessary.)

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FINANCIAL DISCLOSURE REPORTING PAGE 1 (BD)
(Bankruptcy and SIPC)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11I*** of Form BD;

Check ☑ item(s) being responded to:

11I In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:

☐(1) has been the subject of a bankruptcy petition?
(Please fill out SECTION I below.)

☐(2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?
(Please fill out SECTION II below.)

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part 1 of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records. If more than one *control affiliate*, complete a separate DRP for each one.

Disclose details to only one item of 11I on this DRP. Complete Section I and/or Section II as well as Item 18 to complete this DRP.

PART I

NAME OF APPLICANT	APPLICANT CRD NUMBER
NAME OF CONTROL AFFILIATE (if applicable)	CONTROL AFFILIATE CRD NUMBER

PART II

SECTION I If in the past 10 years, the *applicant* or *control affiliate* has ever been a securities firm or a *control affiliate* of a securities firm that has been the subject of a bankruptcy petition:

1. Action Type: *(Compromise, Bankruptcy, Declaration, etc.)*		2. Action Date: MM / DD / YYYY
3. Securities firm name when events occured:		4. Position, Title, or Relationship: (if applicable)
5. Court: *(Name of Federal, State, or Foreign Court)*		6. Location of Court: *(City or County and State or Country)*
7. Docket / Case Number:	8. Chapter Number: *(If Federal Bankruptcy Filing)*	9. Is action currently pending? ☐ Yes ☐ No
10. Disposition Type: *(Discharged, Released, Dismissed, etc.)*		11. Disposition Date: MM / DD / YYYY
12. Provide brief summary of events leading to action. If not dismissed or closed, explain: (Use reverse side of this sheet for additional comments if necessary.)		

SECTION II If in the past 10 years, the *applicant* or *control affiliate* has ever been a securities firm or a *control affiliate* of a securities firm that has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act:

1. Action Type: *(Compromise, Bankruptcy, Declaration etc.)*		2. Action Date: MM / DD / YYYY
3. Securities firm name when events occured:		4. Position, Title, or Relationship: (if applicable)
5. Court: *(Name of Federal, State, or Foreign Court)*		6. Location of Court: *(City or County and State or Country)*
7. Docket / Case Number:	8. Chapter Number: *(If Federal Bankruptcy Filing)*	9. Is action currently pending? ☐ Yes ☐ No
10. Disposition Type: *(Discharged, Released, Dismissed, etc.)*		11. Disposition Date: MM / DD / YYYY
12. Provide brief summary of events leading to action: (Use reverse side of this sheet for additional comments if necessary.)		

If a SIPA trustee was appointed, complete Items 13, 16 and 17. If a direct payment procedure was begun, complete Items 13, 14 and 15.

13. Currently Open? ☐ Yes ☐ No	14. The Amount Paid Or Agreed To Be Paid By Applicant or Control Affiliate: $	15. Date Initiated or Filed: MM / DD / YYYY
16. Trustee Name:		17. Trustee Appointment Date: MM / DD / YYYY

18. Please provide details as to any status/disposition. Include details as to creditors, terms, conditions, amounts due and settlement schedule (if applicable). (Use reverse side of this sheet for additional comments if necessary.)

Rev. 11/95

FINANCIAL DISCLOSURE REPORTING PAGE 2 (BD)

(Bonding Payout and Judgments / Liens)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Items 11J or 11K*** of Form BD;

Check ☑ item(s) being responded to:

11J ❑ Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?
(Please fill out SECTION I below)

11K ❑ Does the *applicant* have any unsatisfied judgments or liens against it?
(Please fill out SECTION II below)

If multiple, unrelated events result in the same affirmative answer, details must be provided on separate DRPs.

NAME OF APPLICANT	APPLICANT CRD NUMBER

SECTION I If a bonding company ever denied, paid out on, or revoked a bond for the applicant:

1. Firm Name: *(Policyholder)*		
2. Bonding Company Name:		
3. Disposition Type: *(Denied, Revoked, Payout)*	4. Disposition Date: MM / DD / YYYY	
5. If disposition resulted in Payout: ▶	Payout Amount: $	Date Paid: MM / DD / YYYY
6. Summarize details of circumstances leading to the necessity of the bonding company action:		

SECTION II If the applicant has an unsatisfied judgment or lien: (Disclose details for only one judgment or lien per DRP.) When the judgment/lien has been satisfied or otherwise disposed of, amend the Form BD and this section to report the outcome.

1. Judgment / Lien Amount: $			2. Judgment or Lien Holder:
3. Judgment / Lien Type: *(Tax, Civil, Default, Liquidated Damages, etc.)*			4. Date Filed: MM / DD / YYYY
5. Is Judgment/Lien Outstanding? ☐ Yes ☐ No	If No, provide status date: MM / DD / YYYY	If No, how was matter resolved? *(Released, Discharged, Removed, Satisfied)*	
6. Court: *(Name of Federal, State or Foreign Court)*	7. Location of Court: *(City or County and State or Country)*	8. Docket / Case Number:	
9. Provide a brief summary of events leading to the action and any payment schedule details including current status (if applicable). (Use reverse side of this sheet for additional comments if necessary.)			

Rev. 11/95

Schedule A of FORM BD

DIRECT OWNERS AND EXECUTIVE OFFICERS

(Answer for Form BD Item 3)

(REV. 11/95)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule A only in new applications to provide information on the **direct** owners and executive officers of the *applicant*. Use Schedule B in new applications to provide information on **indirect** owners. File all amendments on Schedule C. **Complete each column.**

2. List below the names of:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individuals with similar status or functions;
   (b) in the case of an *applicant* that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the *applicant*, unless the *applicant* is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);
   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the *applicant*. For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (c) in the case of an *applicant* that is a partnership, **all** general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and
   (d) in the case of a trust that directly owns 5% or more of a class of a voting security of the *applicant*, or that has the right to receive upon dissolution, or has contributed, 5% or more of the *applicant's* capital, the trust and each trustee.
   (e) in the case of an *applicant* that is a Limited Liability Company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Are there any indirect owners of the *applicant* required to be reported on Schedule B? ☐ Yes ☐ No

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Title or Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

6. Ownership codes are: NA – less than 5%; A – 5% but less than 10%; B – 10% but less than 25%; C – 25% but less than 50%; D – 50% but less than 75%; E – 75% or more

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".
   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
			MM	YYYY			PR		

Schedule B of FORM BD

INDIRECT OWNERS

(Answer for Form BD Item 3)
(REV. 11/95)

Applicant Name: ____________________

Date: __________ Firm CRD No.: __________

OFFICIAL USE

1. Use Schedule B only in new applications to provide information on the **indirect** owners of the *applicant*. Use Schedule A in new applications to provide information on **direct** owners. File all amendments on Schedule C. **Complete each column.**

2. With respect to each owner listed on Schedule A, (except individual owners), list below:
   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;
   For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (b) in the case of an owner that is a partnership, **all** general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and
   (c) in the case of an owner that is a trust, the trust and each trustee.
   (d) in the case of an owner that is a Limited Liability Company ("LCC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Status" column by entering status as partner, trustee, shareholder, etc., and if shareholder, class of securities owned (if more than one is issued).

6. Ownership codes are: C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".
   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
				MM	YYYY			PR		

Schedule C of FORM BD

AMENDMENTS TO SCHEDULES A & B

(Amendments to answers for Form BD Item 3)
(REV. 11/95)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. This Schedule C is used to amend Schedules A and B of Form BD. Refer to those schdeules for specific instructions for completing this Schedule C. **Complete each column.** File with a completed Execution Page (Page 1).

2. In the Type of Amendment ("Type of Amd.") column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are: NA – less than 5%; A – 5% but less than 10%; B – 10% but less than 25%; C – 25% but less than 50%; D – 50% but less than 75%; E – 75% or more; F – Other General Partners

4. **List below all changes to Schedule A: (DIRECT OWNERS AND EXECUTIVE OFFICERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Title or Status	Date Title or Status Acquired MM	Date Title or Status Acquired YYYY	Ownership Code	*Control Person*	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

5. **List below all changes to Schedule B: (INDIRECT OWNERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Entity in Which Interest is Owned	Status	Date Status Acquired MM	Date Status Acquired YYYY	Ownership Code	*Control Person*	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule D of FORM BD

Page 1

(REV. 11/95)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information.

This is an ☐ INITIAL ☐ AMENDED detail filing for the Form BD items checked below:

SECTION I *Other Business Names*

(Check if applicable) ☐ Item 1C(2)

List each of the "other" names and the *jurisdiction(s)* in which they are used.

1. Name	*Jurisdiction*	2. Name	*Jurisdiction*
3. Name	*Jurisdiction*	4. Name	*Jurisdiction*

SECTION II *Other Business*

(Check one) ☐ Item 12Z ☐ Item 13B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section.

Briefly describe any other business (ITEM 12Z); or any other non-securities business (ITEM 13B). Use reverse side of this sheet for additional comments if necessary.

SECTION III *Successions*

(Check if applicable) ☐ Item 5

Date of *Succession* MM / DD / YYYY	Name of Predecessor	
Firm CRD Number	IRS Employer Identification Number (if any)	SEC File Number (if any)

Briefly describe details of the *succession* including any assets or liabilities not assumed by the *successor.* Use reverse side of this sheet for additional comments if necessary.

SECTION IV *Introducing and Clearing Arrangements / Control Persons / Financings*

(Check one) ☐ Item 7 ☐ Item 8A ☐ Item 8B ☐ Item 8C ☐ Item 9A ☐ Item 9B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section including any multiple responses to any item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement or agreement became effective. When reporting a change or termination of an arrangement or agreement, enter the effective date of the change.

Firm or Organization Name	CRD Number (if any)	
Business Address *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY
Individual Name (if applicable) *(Last, First, Middle)*	CRD Number (if any)	
Business Address (if applicable) *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY

Briefly describe the nature of reference or arrangement (ITEM 7 or ITEM 8); the nature of the *control* or agreement (ITEM 9A); or the method and amount of financing (ITEM 9B). Use reverse side of this sheet for additional comments if necessary.

Schedule D of FORM BD

Page 2

(REV. 11/95)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

Use this Schedule D Page 2 to report details for Item 10A. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 2 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10A

☐ 10A. Directly or indirectly, does *applicant control,* is *appiicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?

SECTION V ***Complete this section for control issues relating to ITEM 10A only.***

The details supplied relate to:

1 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

If *applicant* has more than 3 organizations to report, complete additional Schedule D Page 2s.

Schedule D of FORM BD **Page 3** (REV. 11/95)	*Applicant* Name: _____ Date: _____ Firm CRD No.: _____	OFFICIAL USE	OFFICIAL USE ONLY

Use this Schedule D Page 3 to report details for Item 10B. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 3 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10B

☐ 10B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?

SECTION VI ***Complete this section for control issues relating to ITEM 10B only.***

Provide the details for each organization or institution that *controls* the *applicant*, including each organization or institution in the *applicant's* chain of ownership. The details supplied relate to:

1	Financial Institution Name	CRD Number (if applicable)
Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*		Effective Date MM / DD / YYYY Termination Date MM / DD / YYYY
Business Address *(Street, City, State/Country, Zip+4/Postal Code)*		If foreign, country of domicile or incorporation
Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.		

2	Financial Institution Name	CRD Number (if applicable)
Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*		Effective Date MM / DD / YYYY Termination Date MM / DD / YYYY
Business Address *(Street, City, State/Country, Zip+4/Postal Code)*		If foreign, country of domicile or incorporation
Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.		

3	Financial Institution Name	CRD Number (if applicable)
Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*		Effective Date MM / DD / YYYY Termination Date MM / DD / YYYY
Business Address *(Street, City, State/Country, Zip+4/Postal Code)*		If foreign, country of domicile or incorporation
Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.		

4	Financial Institution Name	CRD Number (if applicable)
Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*		Effective Date MM / DD / YYYY Termination Date MM / DD / YYYY
Business Address *(Street, City, State/Country, Zip+4/Postal Code)*		If foreign, country of domicile or incorporation
Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.		

If *applicant* has more than 4 organizations/institutions to report, complete additional Schedule D Page 3s.

Schedule E of FORM BD

(REV. 11/95)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

INSTRUCTIONS

General: Use this schedule to register or report branch offices or other business locations of the *applicant.* Repeat Items 1-12 for each branch office or other business location. Each item must be completed unless otherwise noted. Use additional copies of this schedule as necessary. If this branch office or other business location is using a name in connection with securities activities other than the *applicant's* name, such name must be reported under Item 1C(2) on Page 1 of this form.

Specific:

Item 1. Specify only one box. Check "Add" when a branch office or other business location is opened and the *applicant* is filing the initial notice, "Delete" when a branch office or other business location is closed, and "Amendment" to indicate any other change to previously filed information.

Item 2. CRD will assign this branch number when the *applicant* adds a branch office or other business location as discussed in Item 1 above. If known, complete this item for all deletions and amendments.

Item 3. The Billing Code is an alpha/numeric value consisting of up to eight characters. It is the responsibility of the firm to establish and maintain its own unique billing codes. This is not a required field.

Item 4. Complete this item for all entries. A physical location must be included; post office box designations alone are not sufficient.

Item 5. Complete this item only when the *applicant* changes the address of an existing branch office or other business location.

Item 6. If the branch office or other business location occupies or shares space on premises within a bank, savings bank or association, credit union, or other financial institution, enter the name of the institution in the space provided.

Item 7. Complete this item for all entries. Enter the name of the supervisor or registered representative in charge who is physically at this location.

Item 8. Provide the CRD number for the branch office supervisor named in Item 7.

Item 9. Complete this item for all entries. Provide the date that the branch office or other business location was opened (ADD), closed (DELETE), or the effective date of the change (AMENDMENT).

Item 10. Check "Yes" or "No" to denote whether the location will be an Office of Supervisory Jurisdiction (OSJ) as defined in the NASD Rules of Fair Practice, Article III Section 27.

Item 11. Check "Yes" or "No" to denote whether the location is a business location that will operate pursuant to a written agreement or contract (other than an insurance agency agreement) with the main office and any one or more of the following will apply: the location (A) assumes liability for its own expenses or has its expenses paid by a party other than the *applicant;* (B) has primary responsibility for decisions relating to the employment and remuneration of its registered representatives; (C) deems 5% or more of its total registered representatives to be "independent contractors" for tax purposes; or (D) engages in separate market making and/or underwriting activities.

Item 12. Check the appropriate box(es) if the branch or other business location is registering with the NASD or registering or reporting with a *jurisdiction.*

---

1. *Check only one box:*
☐ Add ☐ Delete ☐ Amendment

2. CRD Branch Number _____

3. Billing Code _____

4. _____ Street
_____ P.O. Box (if applicable), Suite, Floor
_____ City, State/Country, Zip Code + 4/Postal Code

If applicant is changing the address, enter the new address in Item 5.

5. _____ Street
_____ P.O. Box (if applicable), Suite, Floor
_____ City, State/Country, Zip Code + 4/Postal Code

6. _____ Institution Name (if applicable)

7. _____ Supervisor Name

8. _____ CRD Number of Supervisor

9. _____ Effective Date (MM/DD/YYYY)

10. OSJ ☐ Yes ☐ No

11. ☐ Yes ☐ No
If Yes, indicate each Item 11 subset that applies:
☐ A ☐ B ☐ C ☐ D

12. ☐ NASD ☐ *Jurisdiction*

---

1. *Check only one box:*
☐ Add ☐ Delete ☐ Amendment

2. CRD Branch Number _____

3. Billing Code _____

4. _____ Street
_____ P.O. Box (if applicable), Suite, Floor
_____ City, State/Country, Zip Code + 4/Postal Code

If applicant is changing the address, enter the new address in Item 5.

5. _____ Street
_____ P.O. Box (if applicable), Suite, Floor
_____ City, State/Country, Zip Code + 4/Postal Code

6. _____ Institution Name (if applicable)

7. _____ Supervisor Name

8. _____ CRD Number of Supervisor

9. _____ Effective Date (MM/DD/YYYY)

10. OSJ ☐ Yes ☐ No

11. ☐ Yes ☐ No
If Yes, indicate each Item 11 subset that applies:
☐ A ☐ B ☐ C ☐ D

12. ☐ NASD ☐ *Jurisdiction*

[FR Doc. 96–18259 Filed 7–17–96; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; removal of a program condition.

SUMMARY: The Secretary of the Interior is announcing the removal of a condition of program approval imposed during the May 20, 1982 (47 FR 22030), conditional approval of the Alabama regulatory program (hereinafter referred to as the ''Alabama program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program condition pertains to the disposal of excess spoil on abandoned surface mined areas.

EFFECTIVE DATE: July 18, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Acting Field Office Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, Barber Business Park, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 20, 1982, Federal Register (47 FR 22030). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 901.15 and 901.16.

II. Discussion of Program Condition

In the May 20, 1982, notice under Finding 18.1 (47 FR 22038–39), the Secretary approved, with certain restrictions, Alabama's rule at section 805.11(d) [subsequently recodified as Rules 880–X–8J–.03 and 880–X–9B–.02(4)] that allows the disposal of excess spoil generated by current operations on abandoned surface mined lands which had been previously disturbed, but not adequately reclaimed. The Secretary mandated that a one year trial period be held in order to evaluate the adequacy of the provision. No comparable provision was found in the Federal rules.

The Secretary's findings on Alabama's provision noted that under the State's rule the previously disturbed area must be included within the currently permitted and bonded area, but an additional bond amount would not be required. The State rule provides that the condition of the entire area will be considered before full bond release is granted. The Federal regulation at 30 CFR 800.11(b)(1) requires that the permit area upon which operations are to be conducted be covered by a performance bond. By that definition, those areas to be used for excess spoil disposal must be included in the performance bond. In his decision findings, the Secretary expressed concern that the State's provision might spread bond amounts too thin, resulting in less, rather than more, reclamation. However, since the provision had possibilities for increased reclamation activities, the Secretary proposed to allow its implementation on a controlled basis for an appropriate trial period.

So that OSM could consider and evaluate the results of several test sites that had implemented the Alabama provision for the disposal of excess spoil on abandoned mine sites, the trial period was extended four times with the most recent extension expiring on January 1, 1993 (July 27, 1983, 48 FR 34026; May 23, 1985, 50 FR 21254; July 22, 1990, 55 FR 27224; July 17, 1991, 56 FR 32509). The time extension approved on May 23, 1985, required that a minimum of six projects approved for consideration under the State's excess spoil provisions as of July 27, 1983, must be completed to provide adequate data to enable OSM to perform an accurate analysis.

Imposed as a part of the conditional approval of the Alabama program, an extended study of Alabama's excess spoil provision was conducted from May 20, 1983, through February 28, 1996. Based upon this study, OSM determined that the six projects approved for consideration under the State's excess spoil provision provided sufficient data to make a definitive recommendation for removal of the program condition. OSM concluded that implementation of the excess spoil provision has been a useful and beneficial portion of the Alabama program and that it has been administered correctly by the State regulatory authority.

III. Secretary's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Secretary's findings.

During the trial periods mandated by the Secretary of the Interior, OSM tracked the implementation of the excess spoil provision through the receipt and evaluation of annual State reports and through field evaluations of mining permits approved to utilize the excess spoil provision. A comprehensive field study, providing data as of January 31, 1991, concluded that the excess spoil areas on five of the six sites had been successfully reclaimed. A site review of February 14, 1996, confirmed that the excess spoil area on the remaining site had also been successfully reclaimed.

Based upon the results of the field studies and evaluations conducted by OSM, the Secretary finds that implementation of Alabama's excess spoil provision at Rules 880–X–8J–.03 and 880–X–9B–.02(4) has resulted in the successful reclamation of previously disturbed, but inadequately reclaimed, areas on permitted sites without the imposition of additional bond amounts for these areas. Furthermore, the Secretary finds that the application of this provision offers a valuable opportunity for abandoned mine lands to be reclaimed to permanent program standards under the purview of an active coal mining operation. Therefore, the Secretary removes the condition of original program approval codified at 30 CFR 901.15(e).

IV. Summary and Disposition of Comments

Agency and public comments were accepted and considered on Alabama's program resubmission of January 11, 1982, during two comment periods. Responses to all comments were presented in the May 20, 1982, Federal Register (47 FR 22030).

V. Secretary's Decision

Based on the above finding, the Secretary approves the removal of the condition which imposed a trial period to evaluate the implementation of the State provision which allowed a bond variance for the placement of excess spoil on previously disturbed, but unreclaimed, abandoned surface mined areas within the permit area.

The Federal regulations at 30 CFR Part 901, codifying decisions concerning the Alabama program, are being amended to implement this decision.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 24, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, part 901 of the Code of Federal Regulations is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 901.15 [Amended]

2. Section 901.15 is amended by removing paragraph (e).

[FR Doc. 96–18266 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 913

[SPATS No. IL–092–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Illinois regulatory program (hereinafter referred to as the ''Illinois program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed to revise four sections and to add one section to Title 62 of the Illinois Administrative Code (IAC) regulations pertaining to self-bonding. The amendment is intended to revise the Illinois program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: July 18, 1996.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204–1521, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated March 4, 1996 (Administrative Record No. IL–1800), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to the required program amendment that the Director placed on the Illinois program at 30 CFR 913.16(v) on February 2, 1994, (59 FR 4832). The Director required Illinois, prior to implementing the self-bonding statute at 225 ILCS 720/6.01(b), to submit and receive OSM approval of implementing regulations for the self-bonding provisions.

OSM announced receipt of the proposed amendment in the March 29, 1996, Federal Register (61 FR 14039), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on April 29, 1996.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Illinois' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Topic	State regulation	Federal regulation
Regulatory authority responsibility	62 IAC 1800.4 (c), (d)–(f)	30 CFR 800.4 (d), (e)–(g).
Definitions	62 IAC 1800.5(c)	30 CFR 800.5(c).
Requirement to file a bond	62 IAC 1800.11(a)	30 CFR 800.11(a).
Form of the performance bond	62 IAC 1800.12 (b)–(d)	30 CFR 800.12 (b)–(d).
Self-bonding	62 IAC 1800.23	30 CFR 800.23.

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Illinois's proposed rules are no less effective than the Federal rules, and he is removing the required amendment at 30 CFR 913.16(v).

B. Revisions to Illinois' Regulations With No Corresponding Federal Regulations

Illinois proposes to add a regulatory provision to 62 IAC 1800.11, Requirement to File a Bond, at new subsection (e). This provision will allow the State to administer self-bonding for eligible permittees consistent with all applicable provisions of Sections 1800.1 through 1800.50. These sections contain all of Illinois' bonding requirements for surface coal mining and reclamation operations. There is no direct counterpart Federal regulation for this addition. However, the Director finds that Illinois' proposed regulation at 62 IAC 1800.11(e) is not inconsistent with the Federal regulations pertaining to self-bonding.

IV. Summary and Disposition of Comments

Public comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Illinois program. No comments were received from any Federal agency.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

On March 12, 1996, pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IL–1801). EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IL–1801). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Illinois on March 4, 1996. The Director approves the rules as proposed by Illinois with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 913, codifying decisions concerning the Illinois program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved program be submitted to OSM for review as a program amendment. In the oversight of the Illinois program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Illinois of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 913

Intergovenmental relations, Surface mining, Underground mining.

Dated: June 21, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.15 is amended by adding paragraph (t) to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(t) The amendment submitted to OSM on March 4, 1996, pertaining to self-bonding is approved effective July 18, 1996.

§ 913.16 [Amended]

3. Section 913.16 is amended by removing paragraph (v).

[FR Doc. 96–18265 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations; Indirect Financing in Cuba, Civil Penalties.

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Cuban Assets Control Regulations to bring them into conformity with the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996. This rule adds a new prohibition on bank financing, and makes other changes to the regulations governing civil penalties consistent with amendments to the Trading with the Enemy Act contained in the Libertad Act.

EFFECTIVE DATE: March 12, 1996, except for the amendment to § 515.701 which is effective July 18, 1996.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480); Betsy Sue Scott, Senior Program Manager, Civil Penalties Program (tel.: 202/622–6140); or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the Federal Register. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem, dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or touch tone telephone.

Background

The enactment on March 12, 1996, of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, sections 1–401, Pub. L. 104–114, 110 Stat.785 (the ''Libertad Act'') requires amendment of the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), to effect certain changes in the enforcement of the Cuban embargo contained in the Libertad Act.

Section 515.208 is added to the Regulations to include a specific prohibition on knowingly making a loan, extending credit or other financing by a United States national, permanent resident alien, or a United States agency for the purpose of financing transactions involving confiscated property, the claim to which is owned by a United States national. (All transactions with respect to property or interests in property of the Cuban Government or Cuban nationals are prohibited pursuant to § 515.201 of the Regulations.) Sections 515.334, .335, .336, and .337 are added to the Regulations to incorporate definitions for ''United States national,'' ''confiscated,'' ''property,'' and ''permanent resident alien'' as used in the Libertad Act's prohibition on financing, contained in § 515.208. Section 515.701 is amended to state that violations of the prohibition on financing are subject to the civil penalties described in that section.

Section 515.701 is further amended to describe the civil penalty authority contained in section 16 of the Trading with the Enemy Act, 50 U.S.C. App. 1–44, as amended by the Libertad Act. Certain restrictions on the use of civil penalty authority were eliminated by the Act and references to those restrictions are removed.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no

notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Cuba, Currency, Estates, Exports, Fines and penalties, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 50 U.S.C. App. 144; 22 U.S.C. 6001–6010; 22 U.S.C. 2370(a); Pub. L. 104–114, 106 Stat. 785 (22 U.S.C. 6021–6091); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart B—Prohibitions

2. Section 515.208 is added to read as follows:

§ 515.208 Restrictions on loans, credits and other financing.

No United States national, permanent resident alien, or United States agency may knowingly make a loan, extend credit or provide other financing for the purpose of financing transactions involving confiscated property the claim to which is owned by a United States national, except for financing by a United States national owning such a claim for a transaction permitted under United States law.

Subpart C—Definitions

3. Section 515.311 is amended by redesignating the existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 515.311 Property; property interests.

(a) * * *

(b) As used in § 515.208, the term *property* means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

4. Section 515.334 is added to read as follows:

§ 515.334 United States national.

As used in § 515.208, the term *United States national* means:

(a) Any United States citizen; or

(b) Any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

5. Section 515.335 is added to read as follows:

§ 515.335 Permanent resident alien.

As used in § 515.208, the term *permanent resident alien* means an alien lawfully admitted for permanent residence into the United States.

6. Section 515.336 is added to read as follows:

§ 515.336 Confiscated.

As used in § 515.208, the term *confiscated* refers to:

(a) The nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959:

(1) Without the property having been returned or adequate and effective compensation provided; or

(2) Without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(b) The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959:

(1) A debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(2) A debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(3) A debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

Subpart G—Penalties

7. Section 515.701 is amended by removing paragraph (a)(5), redesignating paragraph (a)(6) as (a)(5), and adding paragraph (d) to read as follows:

§ 515.701 Penalties.

* * * * *

(d) Attention is directed to 22 U.S.C. 6033, which provides that a violation of the prohibition against extending a loan, credit, or other financing for the purpose of financing transactions involving confiscated property, as contained in § 515.208 of this part, shall be punishable by such civil penalties as are applicable to violations of this part.

Dated: July 2, 1996.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 9, 1996.

James E. Johnson,

Assistant Secretary (Enforcement).

[FR Doc. 96–18255 Filed 7–15–96; 1:09 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 66

[DoD Directive 6040.2]

Release of Information from Medical Records

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes the Department of Defense's rule concerning release of information from medical records. The part has served the purpose for which it was intended for the Code of Federal Regulations, and is no longer necessary.

EFFECTIVE DATE: July 18, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia L. Toppings at 703–697–4111.

SUPPLEMENTARY INFORMATION: Send requests for paper copies of DoD Directive 6040.2 to the Directives and Records Branch, Room 2A286, Directives and Records Divisions, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

List of Subjects in 32 CFR Part 66

Defense Department; Freedom of information; Health records.

PART 66—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 66 is removed.

Dated: July 11, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–18162 Filed 7–17–96; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–151–7017a; TN–153–7018a; TN–161–9621a; TN–162–9622a; TN–164–9626a; TN–168–9628a; TN–169–9629a; FRL–5533–5]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee SIP Regarding Construction Permits and Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is acting on revisions to the Tennessee State Implementation Plan (SIP) which were submitted to EPA by Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC), to amend the Tennessee chapters on construction and operating permits and the regulation of volatile organic compounds (VOC). The revisions amending the TDAPC's construction and operating permits chapter were submitted on January 17, 1995; the revisions amending the TDAPC's VOC chapter were submitted on February 21, 1995, February 8, 1996, February 23, 1996, April 22, 1996, and April 25, 1996. The revisions to the construction and operating permit incorporate visibility protection requirements into the construction permits portion of the rule. The revisions to the VOC chapter were made to respond to the deficiencies of the VOC chapter as described in 60 FR 10504 published on February 27, 1995, which acted on the Tennessee VOC Reasonably Available Control Technology (RACT) submittal to meet the 1990 VOC RACT ''Catch Up'' requirements. In this notice, EPA is making the determination that all conditional approvals necessary for ozone redesignation purposes have been satisfied. In addition to the above revisions, an amendment was submitted on February 23, 1996, which amended the emissions statement in the VOC chapter, and two new chapters were submitted in April 1996, to regulate offset lithographic printing sources and wood furniture finishing and cleaning operations.

DATES: This final rule is effective September 16, 1996 unless adverse or critical comments are received by August 19, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN151–01–7017, TN153–01–7018, TN161–01–9621, TN162–01–9622, TN164–01–9626, TN168–01–9628, and TN169–01–9629. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365, William Denman, 404/347–3555 extension 4208.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531, 615/532–0554.

FOR FURTHER INFORMATION CONTACT: William Denman 404/347–3555 extension 4208.

SUPPLEMENTARY INFORMATION: On January 17, 1995, the Tennessee Department of Air Pollution Control (TDAPC) submitted a request to the EPA to incorporate paragraphs 1200–3–9–.01 (6), (7), and (8) into the Tennessee SIP (reference file TN151–01–7017). The paragraphs revise the chapter as described below.

1200–3–9–.01(6): This paragraph clarifies that construction permits issued under this rule are based on air contaminants only and do not affect the applicant's obligation to obtain necessary permits from other government agencies.

1200–3–9–.01(7): This paragraph requires the applicant to pay the cost of publication of any notices required by law to effectuate the rights applied for.

1200–3–9–.01(8): This paragraph gives the requirements necessary for protecting visibility as it applies to the issuance of a construction permit.

On May 18, 1993, TDAPC submitted to EPA as part of a submittal of revisions to the VOC chapter, a request to add perchloroethylene to the list of exempt compounds in the definition of a VOC contained in 1200–3–18-.01(1). This definition was conditionally approved on February 27, 1995, based on the commitment by the State of Tennessee to delete it from the list of exempt VOC compounds within one year if EPA had not completed the rulemaking exempting perchloroethylene as a VOC. The rulemaking finalizing the exemption of perchloroethylene as a VOC compound was published by EPA in 61 FR 4588, on February 7, 1996. Therefore, the commitment has been met and perchloroethylene is considered an exempt compound in the VOC definition contained in the Tennessee SIP.

On February 21, 1995, TDAPC submitted to EPA a request to incorporate a new rule (1200–3–18–.33) regulating VOC emissions from the Manufacturing of Synthesized Pharmaceutical Products (reference file TN153–01–7018). This rule applies to all reactors, distillation operations, crystallizers, centrifuges, vacuum dryers, air dryers, production equipment exhaust systems, rotary vacuum filters and other filters, in-process tanks, and leaks associated with the manufacturing of synthesized pharmaceutical products located in the State of Tennessee. This rule does not apply to sources in Hamilton and Shelby counties whose total potential VOC emissions from all the above listed sources are less than 25 tons per year (tpy), nor to sources throughout the State of Tennessee whose total potential VOC emissions are less than 100 tpy except for sources located in the Nashville ozone nonattainment area. The rule applies to all the above listed sources located in the Nashville ozone nonattainment area, regardless of size. The emission standards and the monitoring and record keeping requirements contained in rule 1200–3–18–.33 are consistent with the EPA guidance for RACT. The previous rule 1200–3–18–.33 was given limited approval in 60 FR 10504 on February 27, 1995. The submittal of this rule to replace the previous rule corrects the deficiencies outlined in 60 FR 10504.

On February 8, 1996, TDAPC submitted to EPA revisions to the Tennessee chapter regulating VOCs (1200–3–18) for incorporation into the Tennessee SIP. These submittals address some of the commitments of the conditional approval of Tennessee chapter 1200–3–18 on February 27, 1995 960 FR 10504). EPA is making the determination in this notice, that all conditional approvals necessary for ozone redesignation have been satisfied. In the first submittal dated February 8, 1996, (reference file TN161–01–9621), Tennessee made seventeen revisions to

chapter 1200–3–18. They are described as follows.

1200–3–18–.01(45): A definition for ''maximum theoretical emissions'' was added to the definitions section. This definition clarifies the quantity of VOC emissions by a source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year.

1200–3–18–.01(49): The term ''operation'' was defined as an activity.

1200–3–18–.02(2): The word ''binding'' was deleted from this paragraph for clarification.

1200–3–18–.02(5)(c): The phrase ''which is legally enforceable'' was deleted from the paragraph for clarification.

1200–3–18–.02(7): The phrase ''or in Chapter 21 of this division'' was added to this paragraph for clarification.

1200–3–18–.02(8): The phrase ''and nitrogen oxide emissions'' was added to this paragraph to require sources subject to the emissions statement requirement because of their VOC emissions to also report their nitrogen oxide emissions. This paragraph was granted limited approval in 60 FR 10504 on February 27, 1995, due to this deficiency. This revision corrects the deficiency.

1200–3–18–.02(8): The phrase ''the owner or operator'' was replaced by the phrase ''an official of the company'' to require an official of the company to certify the emissions statement. This paragraph was conditionally approved in 60 FR 10504 on February 27, 1995, based on a commitment from Tennessee to revise the paragraph to include this provision. This revision satisfies that commitment.

1200–3–18–.03(2)(b): The phrase ''in the alternative, over a longer period'' was replaced by the phrase ''for an alternative period which has been approved by the Technical Secretary and the EPA'' for EPA to retain the approval authority of alternate control plans.

1200–3–18–.03(5)(b)(10): This paragraph was revised to require additional monitoring of catalytic incinerators used in the coating and printing industries to provide a more true representation of the actual performance.

1200–3–18–.04(3)(b)(1)(ii): This paragraph was revised to require additional monitoring of catalytic incinerators used in the non-coating and non-printing industries to provide a more true representation of the actual performance.

1200–3–18–.04(4): This paragraph was revised to more clearly state, ''Provisions of this rule apply only to sources identified as subject to those provisions of this rule by other rules of this chapter''.

1200–3–18–.20(1)(b)(2)(vii): This paragraph which exempted usage of 4.0 gallons per day of air drying materials from the miscellaneous metal parts rule was repealed by Tennessee after being disapproved by EPA in 60 FR 10504 on February 27, 1995. Tennessee substituted ''reserved'' for the language in this paragraph.

1200–3–18–.21(7)(d)(2)(x): This paragraph was revised to require additional monitoring of catalytic incinerators used in the coating of flat wood paneling to provide a more true representation of the actual performance.

1200–3–18–.36(1)(b): This paragraph was revised to more clearly identify the sources applicable to the petroleum solvent dry cleaning rule.

1200–3–18–.38(2)(c)(2): This paragraph was revised to require the use of 10% by weight rather than 20% by weight in determining whether a piece of equipment in VOC service in a synthetic organic chemical, polymer, or resin manufacturing operation is in ''light liquid service''. This paragraph was given limited approval in 60 FR 10504 on February 27, 1995, based on a commitment by Tennessee to correct the rule. This revision satisfies that commitment.

1200–3–18–.38(4): A provision was added to this rule to require specific testing after a leak is repaired.

1200–3–18–.39(5)(a)(2): A conversion factor was revised for calculating the mass rates of total VOC. The conversion factor was revised to be 2.95×10^{-9}. In a letter to Tennessee on August 12, 1994, EPA derived the conversion factor which correctly is 2.595×10^{-9}. Tennessee incorrectly approved the conversion factor as 2.95×10^{-9} which is more stringent than the correct 2.595×10^{-9}. Therefore, EPA is approving the more stringent conversion factor. This paragraph was conditionally approved in 60 FR 10504 on February 27, 1995. This revision satisfies that commitment.

In the second submittal dated February 8, 1996, (reference file TN162–01–9622), Tennessee requested that EPA add chapter 1200–3–18–.78 ''Other Facilities That Emit Volatile Organic Compounds (VOC's) Of Fifty Tons Per Year'' to the Tennessee SIP and revise chapter 1200–3–18–.79 ''Other Facilities That Emit Volatile Organic Compounds (VOC's)'' of the Tennessee SIP. The revisions are described as follows.

1200–3–18–.78: This rule, commonly referred to as a non-CTG (Control Techniques Guideline) RACT rule, is designed to apply to those major sources which are not subject to the other industry specific VOC RACT rules. Tennessee already has in their SIP a non-CTG RACT rule for sources whose potential VOC emissions are above 100 tons per year (tpy). This rule applies to sources located in the Nashville nonattainment area whose potential VOC emissions are above 50 tpy. This rule, however, contains language that makes it effective only if the Nashville nonattainment area fails to attain the ozone standard by November 15, 1996, and after the Technical Secretary publishes legal notices in the five nonattainment counties of this failure to attain the ozone standard.

1200–3–18–.78 & .79: Miscellaneous revisions were made to the table of contents to allow for revisions to the SIP regarding these two rules.

1200–3–18–.79(1)(c): This paragraph, which exempts certain source categories from the Tennessee non-CTG RACT rule for sources with potential emissions greater than 100 tpy, was amended by Tennessee to delete 13 categories from the list of source categories exempt from this rule.

1200–3–18–.79(1)(d): Tennessee revised this paragraph to delete all the language previously contained in this section and inserted the phrase ''reserved''. This revision came after EPA disapproved this paragraph in 60 FR 10504 on February 27, 1995.

1200–3–18–.79(1)(e): This new paragraph was added to the rule to specifically identify those sources exempt from the standards and requirements of this rule due to the applicability of other rules.

120–3–18–.79(2): Several clarifying revisions were made to this paragraph to make it read more clearly.

1200–3–18–.79(6): This new paragraph was added to the rule which added monitoring and record keeping requirements for sources which became subject to this rule after the rule effective date.

Another submittal amending chapter 1200–3–18 was made on February 23, 1996 (reference file TN–164–01–9626). This submittal deleted Knox County, previously a marginal ozone nonattainment area which was redesignated to attainment in 58 FR 50271 on September 27, 1993, from the applicability portion of the emissions statement contained in paragraph 1200–3–18–.02(8). Since Knox County submitted their redesignation request prior to the due date for emissions statements and the State has demonstrated that the deletion of this requirement will not adversely affect the maintenance of the ozone standard, this revision is approvable.

On April 22, 1996, the TDAPC submitted to EPA for incorporation into their SIP a new VOC rule (1200–3–18–.43) applicable to offset lithographic printing operations with potential VOC emissions of 25 tpy or more (reference file TN168–01–9628). On April 25, 1996, the TDAPC submitted to EPA for incorporation into their SIP a new VOC rule (1200–3–18–.42) applicable to wood furniture finishing and cleaning operations with potential VOC emissions or 25 tpy or more (reference file TN169–01–9629). These rules are being approved into the SIP because the VOC reductions from these rules are necessary to demonstrate maintenance of the ozone standard. Since Tennessee applied for redesignation prior to the due date for these rules, the rules are not required to meet Reasonably Available Control Technology (RACT) requirements. Should the Middle Tennessee ozone nonattainment area violate the ozone standard prior to being redesignated to attainment, these rules may be required to be made more stringent to meet RACT requirements.

Final Action

The EPA is publishing this rulemaking without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 16, 1996 unless, by August 19, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 16, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 182 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 24, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2219 is revised to read as follows:

§ 52.2219 Identification of plan—conditional approval.

EPA is conditionally approving the following revisions to the Tennessee SIP contingent on the State of Tennessee meeting the schedule to correct deficiencies associated with the following rules which was committed to in letters dated October 7, 1994, and December 16, 1994, from the State of Tennessee to EPA Region 4.

(a) Rule 1200–3–18–.06 Handling, Storage and Disposal of Volatile Organic Compounds (VOC's): Paragraph (1) effective April 22, 1993.

(b) Rule 1200–3–18–.86 Performance Specifications for Continuous Emission Monitoring of Total Hydrocarbons: Subparagraph (11)(c) effective April 22, 1993.

3. Section 52.2220 is amended by adding paragraph (c)(138) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(138) Revisions to chapter 1200–3–9 ''Construction and Operating Permits'' were submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on January 17, 1995. Revisions to chapter 1200–3–18 ''Volatile Organic Compounds'' were submitted by the TDAPC to EPA on February 21, 1995, February 8, 1996, February 23, 1996, April 22, 1996, and April 25, 1996.

(i) Incorporation by reference.

(A) Revisions to the State of Tennessee regulation 1200–3–9 ''Construction and Operating Permits'', subparagraphs 1200–3–9–.01 (6), (7), (8), effective on August 15, 1994.

(B) Revisions to the State of Tennessee regulation by the addition of a new rule 1200–3–18–.33 ''Manufacturing of Synthesized Pharmaceutical Products'', effective on November 21, 1993.

(C) Revisions to the State of Tennessee regulation 1200–3–18 ''Volatile Organic Compounds'' rules 1200–3–18–.01, 1200–3–18–.02, 1200–3–18–.03, 1200–3–18–.04, 1200–3–18–.20, 1200–3–18–.21, 1200–3–18–.36, 1200–3–18–.38, 1200–3–18–.39 effective on October 9, 1995.

(D) Revisions to the State of Tennessee regulations effective October 25, 1995.

(*1*) The addition of a the new rule 1200–3–18–.78 ''Other Facilities that Emit Volatile Organic Compounds (VOC's) of Fifty Tons Per Year''.

(*2*) Revisions to rule 1200–3–18–.79 ''Other Facilities that Emit Volatile Organic Compounds''.

(E) Revisions to the State of Tennessee regulation by the addition of a new rule 1200–3–18–.42 ''Wood Furniture Finishing and Cleaning'', effective August 15, 1995.

(F) Revisions to the State of Tennessee regulation by the addition of a new rule 1200–3–18–.43 ''Offset Lithographic Printing Operations'', effective October 14, 1995.

(ii) Other material. None.

§ 52.2225 [Amended]

4. Section 52.2225 is amended by removing and reserving paragraphs (b) and (c).

[FR Doc. 96–18197 Filed 7–17–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[CA 071–0005a; FRL–5464–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, El Dorado County Air Pollution Control District, Placer County Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following air districts: El Dorado County Air Pollution Control District (EDCAPCD), Placer County Air Pollution Control District (PCAPCD), and Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from adhesives and sealants, architectural coatings, and wood products coatings. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on September 16, 1996 unless adverse or critical comments are received by August 19, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Placerville, CA 95667.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: EDCAPCD Rule 236—Adhesives, EDCAPCD Rule 215—Architectural Coatings, EDCAPCD Rule 237—Wood Products Coatings, PCAPCD Rule 235—Adhesives, PCAPCD Rule 218—Architectural Coatings, and VCAPCD Rule 74.20—Adhesives and Sealants. These rules were submitted by the California Air Resources Board (CARB) to EPA on October 13, 1995, May 24, 1995, November 30, 1994, and November 18, 1993.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in l977 (1977 Act or pre-amended Act), that included the Sacramento Metro (including portions of El Dorado and Placer counties) and Ventura County areas. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the EDCAPCD, PCAPCD and VCAPCD portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-

Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Sacramento Metro Area and the Ventura County Area are classified as severe;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP. The following table includes the dates that the districts adopted the rules, the dates that CARB submitted the rules to EPA, and the dates that the rules were found complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V.[3]

Rule	Adoption	Submittal	Complete-ness
EDCAPCD 215 Architectural Coatings	9/27/94	11/30/94	1/30/95
EDCAPCD 236 Adhesives	7/25/95	10/13/95	11/28/95
EDCAPCD 237 Wood Products Coatings	6/27/95	10/13/95	11/28/95
PCAPCD 218 Architectural Coatings	2/9/95	5/24/95	7/24/95
PCAPCD 235 Adhesives	6/8/95	10/13/95	11/28/95
VCAPCD 74.20 Adhesives and Sealants	6/8/93	11/18/93	12/23/93

This notice addresses EPA's direct-final action for the above-mentioned rules.

These rules control VOC emissions from adhesives, architectural coatings, and wood products coatings. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the districts' effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). EDCAPCD Rules 215, 236, and 237, PCAPCD Rules 218 and 235, and VCAPCD Rule 74.20 control emissions from source categories for which EPA has not finalized CTGs. Accordingly, these rules were evaluated against the interpretation of EPA policy found in the Blue Book, referred to in footnote 1, and against other EPA policy including the EPA Region 9/CARB document entitled: Guidance Document for Correcting VOC Rule Deficiencies (April 1991). EDCAPCD Rule 237 was also evaluated against EPA's draft CTG for wood furniture finishing and cleaning operations, released for comments on September 7, 1995 in the Federal Register, 60 FR 46595. EDCAPCD Rule 215 and PCAPCD Rule 218 were evaluated against the CARB/CAPCOA Suggested Control Measure for Architectural Coatings (July 1989). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

EDCAPCD's submitted Rule 215—Architectural Coatings—covers the Lake Tahoe and the Mountain Counties Air Basin portions of the SIP. Rule 215 includes the following major provisions:

- exemptions for coatings manufactured for use outside the District, coatings supplied in containers with capacities of one liter or less, and emulsion-type bituminous pavement sealers,
- VOC content limits for architectural coatings,
- prohibitions of sale and specification, and
- storage and labelling requirements.

EDCAPCD's submitted Rule 236—Adhesives—is a new rule for El Dorado County that includes the following major provisions:

- VOC content limits for adhesives, adhesive primers, and aerosol adhesives,
- capture and control efficiency requirements for add-on exhaust control systems,
- application equipment requirements, and
- recordkeeping and record retention requirements.

EDCAPCD's submitted Rule 237—Wood Products Coatings—is a new rule for El Dorado County that includes the following major provisions:

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Sacramento Metro and the Ventura County Areas retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe on April 25, 1995 [60 FR 20237].

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

- application equipment requirements,
- VOC content limits for wood products coatings and strippers,
- capture and control efficiency requirements for add-on exhaust control systems,
- a prohibition of specification, and
- surface preparation, clean-up, labeling and recordkeeping requirements.

PCAPCD's submitted Rule 218—Architectural Coatings—covers the Lake Tahoe, the Sacramento Valley, and the Mountain Counties Air Basin portions of the SIP. Rule 218 is a new rule for the Lake Tahoe and the Sacramento Valley Air Basins. The rule includes the following major provisions:

- exemptions for coatings manufactured for use outside the District, coatings supplied in containers with capacities of one liter or less, and emulsion-type bituminous pavement sealers,
- VOC content limits for architectural coatings,
- prohibitions of sale and specification, and
- labelling and recordkeeping requirements.

PCAPCD's submitted Rule 235—Adhesives—is a new rule covering only the Sacramento Valley Air Basin portion of Placer County. Rule 235 includes the following major provisions:

- exemptions for low specific operations,
- VOC content limits for adhesives, primers, sealants, aerosol adhesives, surface preparation solvents, and clean-up materials,
- capture and control efficiency requirements for add-on exhaust control systems,
- prohibitions of sales and specification, and
- recordkeeping and record retention requirements.

VCAPCD's submitted Rule 74.20—Adhesives and Sealants—is a new rule for Ventura County that includes the following major provisions:

- reactive organic compound (ROC) content limits for adhesives, sealants, primers, adhesive aerosols, surface preparation materials, and clean-up solvents,
- surface preparation, storage, clean-up, and stripping requirements,
- capture and control efficiency requirements for add-on exhaust control systems,
- restricted use of 1,1,1-trichloroethane and methylene chloride,
- prohibitions of sales and specification,
- exemptions for specific operations, and
- monitoring, recordkeeping and record retention requirements.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, EDCAPCD Rule 236—Adhesives, EDCAPCD Rule 215—Architectural Coatings, EDCAPCD Rule 237—Wood Products Coatings, PCAPCD Rule 235—Adhesives, PCAPCD Rule 218—Architectural Coatings, and VCAPCD Rule 74.20—Adhesives and Sealants, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 16, 1996, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 16, 1996.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct-final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 18, 1996.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(A)(*5*), (207)(i)(B)(*3*), (220)(i)(B)(*1*), and (225)(i)(B)(*4*) and (C)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(A) * * *

(*5*) Rule 74.20, adopted on June 8, 1993.

* * * * *

(207) * * *

(i) * * *

(B) * * *

(*3*) Rule 215, adopted on September 27, 1994.

* * * * *

(220) * * *

(i) * * *

(B) * * *

(*1*) Rule 218, adopted on February 9, 1995.

* * * * *

(225) * * *

(i) * * *

(B) * * *

(*4*) Rule 235, adopted on June 8, 1995.

* * * * *

(C) * * *

(*1*) Rules 236 and 237, adopted on July 25, 1995 and June 27, 1995, respectively.

* * * * *

[FR Doc. 96–18203 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[OR–54–7269a; FRL–5515–3]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves a revision to the State of Oregon Implementation Plan. EPA is approving, as required by the Clean Air Act, a source-specific Reasonably Available Control Technology (RACT) volatile organic compound (VOC) emissions standard for the Intel Corporation semiconductor manufacturing facility in Portland, Oregon.

DATES: This action is effective on September 16, 1996 unless adverse or critical comments are received by August 19, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Angela McFadden, Office of Air Quality (OAQ–107), EPA Region 10, Seattle, Washington 98101, phone (206) 553–6908.

SUPPLEMENTARY INFORMATION:

I. Background

Section 172 (a)(2) and (b)(3) of the Clean Air Act, as amended in 1977 (1977 Act), required sources of VOC to install, at a minimum, RACT in order to reduce emissions of this pollutant. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). EPA has developed Control Technology Guidelines (CTGs) for the purpose of informing State and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from various categories of sources. Each CTG contains recommendations to the States of what EPA calls the ''presumptive norm'' for RACT. This general statement of agency policy is based on EPA's evaluation of the capabilities of, and problems associated with, control technologies currently used by facilities within individual source categories. EPA has recommended that the States adopt requirements consistent with the presumptive norm level.

On March 3, 1978, the entire Portland-Vancouver Interstate Air Quality Maintenance Area was designated by EPA as a nonattainment area for ozone. The Portland-Vancouver Interstate Air Quality Maintenance Area contains the urbanized portions of three counties in Oregon (Clackamas, Multnomah, and Washington) and one county (Clark) in the State of Washington.

The 1977 Act required States to submit plans to demonstrate how they would attain and maintain compliance with national ambient air standards for those areas designated nonattainment. The 1977 Act further required these plans to demonstrate compliance with primary standards no later than December 31, 1982. An extension up to December 31, 1987, was possible if the State could demonstrate that, despite implementation of all reasonably available control measures, the December 31, 1982, date could not be met.

On October 7, 1982, EPA approved the Portland-Vancouver area ozone attainment plan, including an extension of the attainment date to December 31, 1987 (47 FR 44262).

On June 15, 1988, pursuant to Section 110(a)(2)(H) of the pre-amended Clean Air Act, former EPA Regional Administrator Robie Russell notified the State of Oregon by letter that the State

Implementation Plan (SIP) for the Portland-Vancouver area was substantially inadequate to provide for timely attainment of the NAAQS. In that letter, EPA identified specific actions needed to correct deficiencies in State regulations representing RACT for sources of VOC. Further, the Clean Air Act, as amended in 1990 (amended Act), also requires States to correct deficiencies. In amended Section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before the effective date of the amendments, and which retained that designation and were classified as marginal or above as of the effective date, are required to meet the RACT fix-up requirement. Under Section 182(a)(2)(A), States with such nonattainment areas were mandated to correct their RACT requirements by May 15, 1991. The corrected requirements were to be in compliance with Section 172(b) as it existed before the amendments and as that section was interpreted in the pre-amendment guidance. The SIP call letter interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Portland part of the Portland-Vancouver nonattainment area is classified as marginal. Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991, deadline.

On May 15, 1991, the State of Oregon submitted Oregon Administrative Rules (OAR) 340–22–100 through 340–22–220, General Emission Standards for Volatile Organic Compounds, as an amendment to the Oregon SIP. On October 7, 1982, EPA approved these revisions to the Oregon SIP (58 FR 50848).

On November 20, 1995, the State of Oregon submitted a source-specific RACT VOC emissions standard for the Intel Corporation semiconductor manufacturing facility in Portland, Oregon. This RACT determination limits VOC emissions from the solvent cleaning stations at the Intel Corporation semiconductor manufacturing facility in Portland, Oregon, to 0.0002 pounds per square centimeter of wafer processed, and requires that each sink operate with a freeboard ratio of at least 0.7, have a visible fill line, and be equipped with a cover that is readily opened and closed, and that the cover be closed during idle periods if the sink contains any free standing solvents (refer to Page 11 of operating permit #34–2681, issued to Intel Corporation by the Oregon Department of Environmental Quality). This Federal Register document is to propose approval of the rule revision as an amendment to the SIP.

II. This Action

EPA is approving the revision to the State of Oregon Implementation Plan submitted on November 20, 1995, as an amendment. The RACT determination meets all of the applicable requirements of the Act as determined by EPA.

III. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 16, 1996 unless, by August 19, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 16, 1996.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by by September 16, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: May 22, 1996.

Jane S. Moore,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(114) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * * (114) On November 20, 1995, the Director of the Oregon Department of Environmental Quality (ODEQ) submitted a Reasonably Available Control Technology Standards (RACT) determination for VOC emissions from the Intel Corporation facility in Portland, Oregon.

(i) Incorporation by reference.

(A) The letter dated November 20, 1995, from the Director of ODEQ submitting a SIP revision for a RACT determination contained in Intel's Oregon Title V Operating Permit for VOC emissions, consisting of permit # 34–2681 expiration date 10–31–99, page 11 of 32 pages, effective date September 24, 1993 (State-effective date of the Oregon Title V Program).

[FR Doc. 96–18201 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 5F4486/R2249; FRL–5381–1]

RIN 2070–AB78

Dihydroazadirachtin; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biochemical pesticide dihydroazadirachtin in or on all raw agricultural commodities when applied as an insect growth regulator and/or antifeedant in accordance with good agricultural practices. This exemption was requested by AgriDyne Technologies, Inc.

EFFECTIVE DATE: This regulation becomes effective July 18, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [PP 5F4486/R2249], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 . Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 5F4486/R2249] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Zubkoff, Registration Action Leader (RAL), Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5-W54, CS #1, 2800 Crystal Drive, Arlington, VA 22202. 703–308–8694; e-mail: zubkoff.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 1, 1996 (61 FR 3696), EPA issued a notice (FRL–4994–3) that AgriDyne Technologies, Inc., 2401 South Foothill Drive, Salt Lake City, UT (represented by E.R. Butts International, Inc. of 26 Sherman Court, P.O. Box 764, Fairfield, CT 06430) had submitted pesticide petition (PP) 5F4486 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FF DCA), 21 U.S.C. 346a(d), to exempt from the requirement of a tolerance the residues of the of the biochemical pesticide dihydroazadirachtin in or on all raw agricultural commodities when applied as an insect growth regulator and/or antifeedant in accordance with good agricultural practices.

There were no adverse comments, or requests for referral to an advisory committee received in response to this notice of filing.

22,23-Dihydroazadirachtin and its related metabolites are extracts of the seed kernels of the neem tree, *Azadirachtin indica*, are chemically similar to azadirachtin, the naturally-occurring neem plant extract, but differ by a single double bond, and are biologically equivalent to azadirachtin in its functionality when tested as a growth regulator against the Mexican bean beetle, *Epilachna varivestis*. Additionally, azadirachtin is exempted from the requirement of a tolerance when used as a pesticide at 20 grams or less per acre on all raw agricultural commodities (40 CFR 180.1119).

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include: an acute oral toxicity study in rats, an acute dermal study in rabbits, an acute inhalation study in rats, a primary eye irritation study in rabbits, a primary dermal irritation study in rabbits, a dermal sensitization test (Buehler) in guinea pigs, a battery of genotoxicity

studies, an immunotoxicity study with azadirachtin in mice, a 90-day oral feeding study with azadirachtin in rats, and a developmental toxicity study with azadirachtin in rabbits.

The results of these studies indicated that dihydroazadirachtin has an acute oral LD_{50} greater than 5,000 mg/kg body weight in rats for both the technical grade active ingredient and an end-use product (DAZA 4.5 WDG), an acute dermal LD_{50} greater than 2,000 mg/kg body weight in rabbits, an acute inhalation LD_{50} greater than 2.9 mg/L in rats, minimally irritating to the eye based on the primary eye irritation study, a non- to slight dermal irritant based on the primary dermal irritation study for the technical and end-use product, respectively, and a non-dermal sensitizer (Buehler sensitization test) in guinea pigs. In a mutagenicity study (Ames assay) the test substance, dihydroazadirachtin, was not mutagenic with or without activation. In a separate Ames assay and in other genotoxicity studies designed to detect structural chromosomal aberrations (i.e., *in vivo* unscheduled DNA synthesis and chromosome aberation/CHO cell culture), azadirachtin, the naturally-occurring unmodified counterpart, was not found to be mutagenic. Based on these results and due to the known composition of dihydroazadirachtin and its reduced metabolites, further tests to address structural chromosomal aberrations and forward mutations were waived. Results from an immunotoxicity assay, a 90–day oral feeding study, and a developmental toxicity assay evaluating azadirachtin indicated no significant effects.

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the use of dihydroazadirachtin. This rule establishes an exemption from the requirement of a tolerance; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for dihydroazadirachtin.

Dihydroazadirachtin is considered useful for the purposes for which the exemption from tolerance is sought. Based on the information and data considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under the docket number [PP 5F4486/R2249] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was

published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 8, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346A and 371.

2. Section 180.1169 is added to subpart C to read as follows:

§ 180.1169 Dihydroazadirachtin; exemption from the requirement of a tolerance.

The biochemical pesticide dihydroazadirachtin is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as an insect growth regulator and/or antifeedant at 20 gm or less per acre with the maximum number of seven applications per growing season on all raw agricultural commodities.

[FR Doc. 96–18159 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 261

[FRL–5536–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by United Technologies Automotive, Inc. (UTA), Dearborn, Michigan, to exclude (or ''delist''), conditionally, on a one-time, upfront basis, a certain solid waste generated by UTA's chemical stabilization treatment of lagoon sludge at the Highway 61 Industrial Site in Memphis, Tennessee, from the lists of hazardous wastes in §§ 261.31 and 261.32. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency has concluded that UTA's petitioned waste will not adversely affect human health and the environment. This action responds to UTA's petition to delist this waste on a ''generator-specific'' basis from the hazardous waste lists. In accordance with the conditions specified in this final rule, the petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

The Agency also proposed to use two methods to evaluate the potential impact of the petitioned waste on human health and the environment: A fate and transport model (the EPA Composite Model for Landfills, ''EPACML'' model), based on the waste-specific information provided by the petitioner; and the generic delisting levels in § 261.3(c)(2)(ii)(C)(*1*) for nonwastewater residues generated from treatment of the listed hazardous waste F006, by high temperature metal recovery (HTMR). Specifically, EPA proposed to use the EPACML model to calculate the concentration of each hazardous constituent that may be present in an extract of the petitioned waste obtained by means of the Toxicity Characteristic Leaching Procedure (TCLP), which will not have an adverse impact on groundwater if the petitioned waste is delisted and then disposed in a Subtitle D landfill. EPA compared the concentration for each hazardous constituent calculated by the EPACML model to the generic delisting level for that constituent in § 261.3(c)(2)(ii)(C)(*1*), and proposed to use the lower of these two concentrations as the delisting level for each hazardous constituent in the waste. In response to comments received on the proposed rule, the delisting levels in this final rule are based on the EPACML model, rather than the generic levels in § 261.3(c)(2)(ii)(C)(*1*).

EFFECTIVE DATE: July 18, 1996.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia 30365, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–96–UTEF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the Tennessee Department of Environment and Conservation, please see below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Judy Sophianopoulos, RCRA Compliance Section, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 347–3555, x6408, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact Jerry Ingram, Tennessee Department of Environment and Conservation (TDEC), 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, (615) 532–0850. If you wish to copy documents at TDEC, please contact Mr. Ingram for copying procedures and costs.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow the Agency to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste.

In addition, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22, by generators within their Regions [National Delegation of Authority 8–19], in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management

Division [Regional Delegation of Authority 8–19].

B. History of This Rulemaking

United Technologies Automotive, Inc. (UTA), Dearborn, Michigan, petitioned the Agency to exclude (or ''delist''), conditionally, on a one-time, upfront basis, a certain solid waste generated by UTA's chemical stabilization treatment of lagoon sludge at the Highway 61 Industrial Site in Memphis, Tennessee. After evaluating the petition, EPA proposed, on April 3, 1996, to exclude UTA's waste from the lists of hazardous waste under §§ 261.31 and 261.32 (see 61 FR 14696–14709, April 3, 1996).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant UTA's petition.

II. Disposition of Delisting Petition United Technologies Automotive, Inc., Dearborn, Michigan

A. Proposed Exclusion

United Technologies Automotive, Inc. (UTA), located in Dearborn, Michigan, petitioned the Agency to exclude, conditionally, on a one-time, upfront basis, the treated lagoon waste which will be generated during a removal action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The removal action is required by the Unilateral Administrative Order (''the UAO'') issued to UTA by EPA, on January 26, 1995. The waste to be treated was generated prior to 1980 in seven lagoons formerly used to manage electroplating wastewater at the Highway 61 Industrial Site in Memphis, Tennessee (''the Site''). UTA's petition states that electroplating operations at the Site were conducted between the early 1960s and 1973, and no electroplating wastewater sludge was generated after 1973. Notwithstanding the fact that the waste was generated prior to 1980, the waste so generated meets the listing definition of EPA Hazardous Waste No. F006—''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/ stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum''—when it is actively managed by excavation and treatment after the effective date of the listing of F006. (Original listing of F006 by Interim Final Rule in 45 FR 33112–33133, May 19, 1980; Modified in 45 FR 74384–74892, Nov. 12, 1980; and clarified by Interpretative Rule in 51 FR 43350–43351, Dec.2, 1986). See 51 FR 40577, Nov. 7, 1986; 53 FR 31147–31148, Aug. 17, 1988; 53 FR 51444 and 51445, Dec. 21, 1988; 55 FR 22678, June 1, 1990; and *Chemical Waste Management* v. *EPA*, 869 F.2d at 1535–37 (D.C. Cir. 1989), for Agency position on active management. UTA proposed to treat the sludge by chemical stabilization, and to delist the treatment residue, which is also classified as F006 by application of § 261.3(c)(2)(i), the derived-from rule. See 57 FR 7628, Mar. 3, 1992. By application of the ''contained-in policy,'' any lagoon soil excavated and treated with the sludge must also be managed as F006. See memorandum, dated February 17, 1995, from Devereaux Barnes to Norm Niedergang, and Region 4 Guidance Number TSC–92–02, dated August 1992.

UTA petitioned the Administrator, in October 1995, to exclude its waste, generated by treatment of sludges from Site Lagoons 1 through 6. Sludges from Lagoon 7 will not be removed and treated, because constituent concentrations were found, by total analysis of these samples, to be below the cleanup levels required by the UAO. On November 21, 1995, in accordance with the delegation of delisting authority by the Administrator to the Regional Administrators, UTA submitted to EPA, Region 4, the petition to delist F006 generated by chemical stabilization of sludges from the six lagoons at the Site.

The hazardous constituents of concern for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Chemically stabilized sludge and soil from the six lagoons at the Site is the waste which is the subject of this petition. UTA petitioned the Agency to exclude its waste because it does not believe that the waste meets the criteria of the listing.

UTA claims that its chemically stabilized sludge/soil is not hazardous because the constituents of concern, although present in the waste, are present in either insignificant concentrations or, if present at significant levels, are essentially in immobile forms. UTA also believes that this waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 USC 6921(f), and 40 CFR 260.22(d)(2)–(4).

In support of its petition, UTA submitted: (1) Detailed descriptions of the waste and history of its management; (2) detailed descriptions of all previously known and current activities at the Site; (3) results from total constituent analyses for arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, (the eight Toxicity Characteristic (TC) metals listed in § 261.24); the priority pollutant metals, including nickel, (a hazardous constituent for which F006 is listed), antimony, and thallium; and cyanide; (4) results for the eight Toxicity Characteristic (TC) metals from the Toxicity Characteristic Leaching Procedure (TCLP; Method 1311 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 [Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), and IIB (January 1995)]; methods in this publication are referred to in the proposed rule and in today's final rule as ''SW–846,'' followed by the appropriate method number); (5) results from the Multiple Extraction Procedure (MEP; SW–846 Method 1320) for cadmium and chromium; (6) results from the analysis for total petroleum hydrocarbons (TPH, Method 418.1 in ''Methods for Chemical Analysis of Water and Wastes,'' EPA Publication EPA–600/4–79–020); (7) results from characteristics testing for ignitability, corrosivity, and reactivity; (8) results from total constituent analyses for 33 volatile organic compounds and 64 semivolatile organic constituents, including the TC organic constituents; and (9) groundwater monitoring data collected from wells monitoring the on-site lagoons.

After reviewing the petition, the Agency proposed to grant the exclusion to UTA, on April 3, 1996. See 61 *FR* 14696–14709, April 3, 1996, for details.

Today's final rule granting this petition for delisting is the result of the Agency's evaluation of UTA's petition and response to public comments.

B. Response to Public Comments

Comments: The Agency received public comments from two interested parties (UTA (1) and Horsehead Resource Development Company, Inc. (HRD) (2)) on the April 3, 1996 proposal. The docket reference numbers for these comments are R4–UTEP–18 and R4–UTEP–19, respectively, and the comments are available for viewing at

the EPA Library, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The comments are also included in the docket for this final rule, reference number R4–96–UTEF, available at the EPA, Region 4, Library.

Commenter (1), UTA: Specific comments included the following, where page numbers in parentheses are page numbers of the proposed rule (61 *FR* 14696–14709, April 3, 1996):

(a) UTA is located in Dearborn, Michigan (page 14696);

(b) Samples #36 and #6–36 were stabilized with 10% lime kiln dust and 5% portland cement (page 14701);

(c) A revised estimate of the treated waste volume is 20,500 cubic yards, which the commenter states should not affect the dilution attenuation factor (DAF) of 100, in the proposed rule (pages 14699, 14702, 14703, and 14708); and

(d) If the delisting petition is approved, UTA proposes to dispose of the delisted waste at Browning-Ferris Industries' (BFI's) Subtitle D facility in South Shelby County, Tennessee (page 14701).

The commenter stated the following objections to the Agency's delisting levels and the method for determining them:

(e) The generic levels in 40 CFR 261.3(c)(2)(ii)(C)(*1*) were deemed inappropriate by UTA, because they are technology-based; UTA considers the risk-based levels obtained by the EPACML model to be more appropriate (pages 14696, 14705, 14708); and

(f) UTA disagrees with the appropriateness of EPA's statement that it is generally unable to predict or control how a delisted waste is managed, in that UTA's waste is subject to a CERCLA Administrative Order; UTA also believes that the Agency should consider the site-specific conditions of BFI's Subtitle D landfill in Shelby County, Tennessee (page 14698).

The majority of the remaining comments dealt with a comparison between the proposed delisting levels and levels proposed in the Hazardous Waste Identification Rule (HWIR) (see 60 *FR* 66334, December 21, 1995). UTA believes that the HWIR levels are more appropriate for its petitioned waste than the proposed delisting levels.

Response to Commenter (1), UTA: The changes recommended in specific comments (a), (b), (c), and (d) have been made, and added to the final rule and the docket for the final rule. In the April 3, 1996 proposal, the Agency determined that disposal in any Subtitle D landfill is the most reasonable, worst-case disposal scenario for UTA's petitioned waste, that the major exposure route of concern for any hazardous constituents would be ingestion of contaminated groundwater, and that the EPACML fate and transport model, modified for delisting, yielded a DAF of 100 for a one-time disposal of 11,500 cubic yards. EPA agrees with UTA that the revised estimated volume of 20,500 cubic yards yields a DAF closer to 100 than to 96. However, in order to account for possible variations associated with volume estimates, the Agency has selected a slightly lower, thus more stringent, DAF of 96 for UTA's revised estimated volume of 20,500 cubic yards, which corresponds to a one-time waste volume of 25,000 cubic yards. In keeping with past delisting decisions for chemically stabilized waste where the constituents of concern are immobilized (see, for example, 61 *FR* 18088–18091, April 24, 1996 and 60 FR 31107–31115, June 13, 1995), the Agency used concentrations in waste leachate as delisting levels for this final rule, rather than total concentrations, such as proposed in the HWIR.

With regard to the objection raised in subparagraph (f) above, EPA's position continues to be that site-specific conditions at landfills are not appropriate for consideration in delisting petitions. Commenter (1), UTA, did not submit site-specific conditions. EPA notes that both the CERCLA Administrative Order and Section II.E. of the proposed rule (61 FR 14706, April 3, 1996) state that UTA's petitioned waste is subject to all applicable Federal and State solid waste management regulations.

After careful consideration, EPA agrees that the objection raised by UTA in subparagraph (e) above is reasonable, in that the generic levels of § 261.3(c)(2)(ii)(C)(*1*), in 60 FR 31107–31115, June 13, 1995, were selected for the delisting of a large-volume, continually generated, multi-site waste, rather than for a one-time delisting of a relatively small volume of waste. For this reason, and because the petitioned waste is subject to a CERCLA Administrative Order, the Agency is finalizing the exclusion language in 40 CFR part 261, Appendix IX, Table 1 to delist 20,500 cubic yards of the petitioned waste, UTA's revised estimated volume as stated in its comments, with the delisting levels revised as shown in Table 1 below. The levels were calculated by multiplying the appropriate health-based level for each constituent, which is the maximum contaminant level (MCL), as established by the Safe Drinking Water Act, by an EPACML DAF of 96.

TABLE 1.—REVISED DELISTING LEVELS FOR TREATED WASTE GENERATED BY UTA AT HIGHWAY 61 INDUSTRIAL SITE, MEMPHIS, TENNESSEE

Constituent	Maximum contaminant level (MCL) (mg/l)	Delisting level final rule [= (DAF of 96) x MCL] (mg/l in TCLP [1] Leachate)	Delisting level proposed rule (mg/l in TCLP [1] leachate [2])
Cadmium	0.005	0.48	0.05.
Chromium	0.1	9.6	0.33.
Lead	[3] 0.015	1.4	0.15.
Nickel	[4] 0.1	9.6	1.0.
Cyanide	0.2	19.2	1.8 mg/kg [2].

[1] TCLP stands for the Toxicity Characteristic Leaching Procedure, Method 1311 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 [Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), and IIB (January 1995).

[2] The cyanide delisting level in the proposed rule is in units of mg/kg, by total analysis of unextracted waste.

[3] This value is an action level, as defined in 40 CFR 141.2, rather than a MCL.

[4] This value is from *Draft Docket Report on Health-Based Levels and Solubilities used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR § 260.20 and § 260.22*, dated July 1994, rather than a MCL. This document is in the docket for the proposed rule, and is one of the documents with reference number R4–96–UTEP–8.

Commenter (2), HRD: The commenter did not object to the proposed decision to delist UTA's waste, since the constituent levels in the waste were low enough that HRD did not feel that any statutory mandates were violated.

The commenter summarized two principal statutory requirements that HRD feels must be accounted for in order for any delisting decision to be valid:

(a) The Pollution Prevention Act of 1990 established a hierarchy of waste management methods, in order of decreasing preference, as (1) Source reduction, (2) recycling, (3) treatment, and (4) land disposal; the commenter emphasized that recycling, such as high temperature metal recovery, is favored over waste treatment methods, such as stabilization; the commenter also stated that the low levels of metals in the petitioned waste were not amenable to recycling; and

(b) The Land Disposal Restrictions (LDR) of the Resource Conservation and Recovery Act (RCRA) include stringent treatment standards which must be met prior to land disposal of hazardous wastes; the commenter felt that LDR treatment standards should be one of the ''factors (including additional constituents) other than those for which the waste was listed'' that could cause the waste to be a hazardous waste or to be retained as a hazardous waste (see 40 CFR 260.22(d)(2)); again the commenter did not feel that the constituent levels in the petitioned waste were high enough to exceed LDR treatment standards.

Response to Commenter (2), HRD: EPA agrees with the commenter that the statutory information summarized above presents very important considerations. The Agency also agrees that the decision to delist the waste which is the subject of this final rule is not in conflict with either of these statutes.

It is also EPA's position that if Agency evaluation of a delisting petition reveals that the petitioned waste meets all the appropriate criteria in *Petitions to Delist Hazardous Wastes—A Guidance Manual, Second Edition*, EPA Publication No. EPA/530–R–93–007, March 1993 (see docket to the proposed rule, reference number R4–96–UTEP–8), the conditions specified in 40 CFR 260.22(d)(2) have been met, and the waste need not be subject to RCRA Subtitle C. That is to say, the delisting levels established by the Agency are protective of human health and the environment, and a waste that meets these levels does not have factors that ''could cause the waste to be a hazardous waste.'' LDR treatment standards are based on what is achievable by the best demonstrated available technology (BDAT). Because the standards are not risk-based, the concentration levels which are LDR treatment standards are often below those that would be necessary to protect human health and the environment.

The Agency responded, in an earlier rulemaking, to an earlier, similar comment by HRD concerning the effect that delisting stabilized wastes might have on the recycling of wastes to recover metals (see 60 FR 31109, June 13, 1995). EPA's position continues to be that no policies are undermined nor regulations violated by the delisting of a waste which meets all applicable criteria for delisting. Specifically, the existence of an alternate treatment and/or recycling technology is not a factor that ''could cause the waste to be a hazardous waste.''

Final Agency Decision

For the reasons stated in both the proposal and this final rule, the Agency believes that UTA's petitioned waste should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to United Technologies Automotive, Inc., Dearborn, Michigan, to exclude (or ''delist''), conditionally, on a one-time, upfront basis, its petitioned waste, which consists of the treated waste generated by UTA's chemical stabilization treatment of lagoon sludge at the Highway 61 Industrial Site in Memphis, Tennessee, and described in the petition as F006. This one-time exclusion applies to 20,500 cubic yards of waste covered by UTA's delisting petition, and is conditioned upon verification testing which demonstrates that the waste meets the delisting levels summarized in Table 1 above, and specified in 40 CFR Part 261, Appendix IX, Table I, as amended in this final rule.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction by this final exclusion, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation (see 40 CFR part 260, Appendix I). The petitioned waste in this final rule is also subject to a CERCLA Administrative Order, and UTA has stated its intention (reference number R4–UTEP–18) to dispose of the delisted waste in BFI's Subtitle D Landfill in Shelby County, Tennessee.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, UTA must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule is effective on July 18, 1996. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to

achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication.

These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. The reduction is achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. This rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have an adverse economic impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and will be limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: June 25, 1996.

James S. Kutzman,

Associate Director, Office of RCRA & Fed. Facilities.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX to part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
United Technologies Automotive, Inc.	Dearborn, Michigan	Chemically stabilized wastewater treatment sludge and soil (CSWWTSS) (EPA Hazardous Waste No. F006) that United Technologies Automotive (UTA) will generate during CERCLA removal of untreated sludge and soil (EPA Hazardous Waste No. F006) from six lagoons at the Highway 61 Industrial Site in Memphis, Tennessee. This is an upfront, one-time exclusion for approximately 20,500 cubic yards of waste that will be disposed of in a Subtitle D landfill after [insert date of final rule.] UTA must demonstrate that the following conditions are met for the exclusion to be valid:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures must be performed according to SW–846 methodologies. (A) *Initial Verification Testing:* UTA must collect and analyze a representative sample of every batch, for eight sequential batches of CSWWTSS generated during full-scale operation. A batch is the CSWWTSS generated during one run of the stabilization process. UTA must analyze for the constituents listed in Condition (3). A minimum of four composite samples must be collected as representative of each batch. UTA must report operational and analytical test data, including quality control information, no later than 60 days after the generation of the first batch of CSWWTSS. (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (1)(A) is successful, i.e., delisting levels of condition (3) are met for all of the eight initial batches, UTA must test a minimum of 5% of the remaining batches of CSWWTSS. UTA must collect and analyze at least one composite sample representative of that 5%. The composite must be made up of representative samples collected from each batch included in the 5%. UTA may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are non-hazardous. (2) *Waste Holding and Handling:* UTA must store as hazardous all CSWWTSS generated until verification testing as specified in Condition (1)(A) and (1)(B), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. If the levels of constituents measured in the samples of CSWWTSS do not exceed the levels set forth in Condition (3), then the CSWWTSS is non-hazardous and may be managed in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set forth in Condition (3), the batch of CSWWTSS generated during the time period corresponding to this sample must be retreated until it meets the delisting levels set forth in Condition (3), or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Delisting Levels:* All leachable concentrations for these constituents must not exceed the following levels (ppm): Cadmium—0.48; chromium—9.6; cyanide—19.2; lead—1.4; and nickel—9.6. Metal concentrations in the waste leachate must be measured by the method specified in 40 CFR 261.24. Total cyanide concentration in the leachate must be measured by Method 9010 or Method 9012 of SW–846. (4) *Changes in Operating Conditions:* UTA must notify the Agency in writing when significant changes in the stabilization process are necessary (e.g., use of new stabilization reagents). Condition (1)(A) must be repeated for significant changes in operating conditions. (5) *Data Submittals:* UTA must notify EPA when the full-scale chemical stabilization process is scheduled to start operating. Data obtained in accordance with Conditions (1)(A) must be submitted to Jeaneanne M. Gettle, Acting Chief, RCRA Compliance Section, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia. 30365. This notification is due no later than 60 days after the first batch of CSWWTSS is generated. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained by UTA for a minimum of five years, and must be furnished upon request by EPA or the State of Tennessee, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's void exclusion.
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[FR Doc. 96–18044 Filed 7–17–96; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 071296A]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the total allowable catch of Atka mackerel in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), July 13, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The total allowable catch of Atka mackerel for the Central Aleutian District was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI and subsequent reserve apportionment (61 FR 16085, April 11, 1996) as 33,600 metric tons (mt). See § 679.20(c)(3)(iii). As of June 8, 1996, 1,800 mt remain. The directed fishery for Atka mackerel in the Central Aleutian District was closed on April 14, 1996, (61 FR 16883, April 18, 1996; see also § 679.20(d)(iii)) and reopened on July 1, 1996 (61 FR 33046, June 26, 1996).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 679.20(d)(1), that the Atka mackerel total allowable catch in the Central Aleutian District subarea soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 33,000 mt after determining that 600 mt will be taken as incidental catch in directed fishing for other species in the Central Aleutian District. Consequently NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18150 Filed 7–12–96; 4:28 pm]
BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 071296C]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker/Rougheye Rockfish Species Group in the Eastern Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of the shortraker/rougheye rockfish species group in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of the shortraker/rougheye rockfish species group in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the shortraker/rougheye rockfish species group total allowable catch (TAC) in the Eastern Regulatory Area of the GOA has been reached.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), July 14, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at Subpart H 50 CFR part 600 and 50 CFR part 679.

The TAC for the shortraker/rougheye rockfish species group in the Eastern Regulatory Area of the GOA was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996), as 530 metric tons. (See § 679.20(c)(3)(ii).)

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.20(d)(2), that the TAC for the shortraker/rougheye rockfish species group in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of the shortraker/rougheye rockfish species group in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18188 Filed 7–15–96; 2:33 pm]
BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 071296B]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish in the West Yakutat District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the West Yakutat District of the Gulf of Alaska (GOA). NMFS is requiring that catches of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish total allowable catch (TAC) assigned to trawl

gear in the West Yakutat District of the GOA has been reached.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), July 13, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The allocation of the sablefish TAC assigned to trawl gear in the West Yakutat District of the GOA was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996), as 152 metric tons. (See § 679.20(a)(4)(i).)

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.24(c)(2)(ii), that the allocation of the sablefish TAC assigned to trawl gear in the West Yakutat District of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the West Yakutat District of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18188 Filed 7–15–96; 2:33 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 071596B]

Groundfish of the Gulf of Alaska; Sablefish in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish total allowable catch (TAC) assigned to trawl gear in the Central Regulatory Area of the GOA has been reached.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), July 15, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996), as 1,380 metric tons. (See § 679.20(a)(4)(ii)(B).)

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.20(d)(2), that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18271 Filed 7–15–96; 2:51 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 139
Thursday, July 18, 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

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1962

RIN 0560–AE62

Post Bankruptcy Loan Servicing Notices

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to revise its regulations regarding servicing accounts when a bankruptcy filing is dismissed. This change will clarify that a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers will be sent after a borrower is dismissed from bankruptcy if the borrower was not previously notified and the account was not accelerated.

DATES: Comments must be received by August 2, 1996 to be assured consideration.

ADDRESSES: Send comments to Director, Farm Credit Programs Loan Servicing and Property Management Division, USDA, FSA, P.O. Box 2415, Ag Box Code 0523, Washington, D.C. 20013–2415. Comments may be hand delivered to USDA, FSA at 14th and Independence Ave., SW., Room 5449–S, Washington DC. Supporting documents for the proposed rule, comments on the proposed rule and internal Agency use documents may be viewed during normal working hours at the above address with prior notification.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Credit Programs Loan Servicing Division, P.O. Box 2415, Ag Box Code 0523, Washington, D.C. 20013–2415, telephone (202) 720–9053.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and has not been reviewed by OMB.

Executive Order 12372

1. For the reasons set forth in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to and has met the provisions of E.O.12372.

Programs Affected

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, Environmental Program. It is the determination of the issuing agencies that this action is not a major Federal action significantly affecting the environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

This proposed rule has been reviewed in accordance with E.O. 12778, Civil Justice Reform. In accordance with this rule: (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 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Regulatory Flexibility Act

The Farm Service Agency (FSA) certifies that this rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601).

Paperwork Reduction Act

This final rule does not impose any new information or recordkeeping requirements on the public.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Under section 202 of the UMRA, agencies 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, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires agencies 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.

The 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. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Discussion of Proposed Rule

These changes involve the farm credit programs (FCP) loans of FSA formerly administered by the Farmers Home Administration (FmHA) as Farmer Programs loans. This reorganization was authorized by the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178). Current FSA direct FCP loan servicing regulations require a delinquent account servicing notice pursuant to 7 CFR part 1951, subpart S to be sent to borrowers if their bankruptcy is dismissed. Currently, in such cases, the Notice of the Availability of Loan Service Programs and Debt Settlement Programs for Delinquent Farm Borrowers, is sent depending on the advice of the Office of General Counsel, even if the borrower

had already exhausted all servicing rights and the account had been accelerated prior to the bankruptcy filing. Resending the notice causes extensive delays in the collection of accounts. The regulations at 7 CFR part 1962, § 1962.47 (d)(2) were promulgated to ensure that all borrowers who had filed bankruptcy but whose bankruptcy was dismissed would receive the initial notification of loan servicing options required by § 331D of the Consolidated Farm and Rural Development Act. It was never the intent of the regulation to allow renotification if the borrower's servicing rights had been exhausted and the account accelerated prior to the bankruptcy filing.

Moreover, the Agency is also revising the regulation to limit the scope and issuance of the loan servicing notice. When borrowers file for bankruptcy their attorney will only be notified of the loan servicing rights that remain. Upon dismissal of a bankruptcy action or a default in a confirmed bankruptcy reorganization plan, no new servicing notices will be sent if the borrower or borrower's attorney has been previously notified of the loan servicing options. Since the Agency's loan servicing program has been in effect since October 14, 1988, borrowers have had many opportunities to apply for loan servicing. Congress has limited the amount of debt forgiveness to $300,000 per borrower, as well as limiting writedowns and buyouts under § 353 of the Consolidated Farm and Rural Development Act to one per borrower on loans made after January 6, 1988. See § 1816 of the Food Agriculture and Trade Act of 1990. In section 648(b) of the Federal Agriculture Improvement Act of 1996 (1996 Act) Congress imposed the further limitation that the Agency may not provide debt forgiveness on a direct loan if the borrower has already received debt forgiveness on a direct loan. Section 640 (2) of the 1996 Act expanded the definition of debt forgiveness to include discharging of debt as a result of bankruptcy. Based on these limitations, it is no longer appropriate for the Agency to renotify borrowers who have previously received the notice of loan servicing options. Many of these borrowers will no longer be eligible for additional loan servicing. Also, by expanding the definition of debt forgiveness to include discharges in bankruptcy, Congress has endorsed the view that the borrower has elected remedy in the filing of a bankruptcy petition.

Additionally, the agency is proposing to remove administrative processes from the regulations and has reserved certain paragraphs, leaving only regulatory actions which impact the public in the Federal Register. This streamlining makes the regulation more concise and easier to read and understand. The Agency is developing a separate handbook to address such matters as what forms must be filed and where to submit loan requests and the Agency's internal operating procedures. This handbook will not be published in the Federal Register but will be available to the public upon request at no cost.

For example, in this rule, the Agency is removing the specific references to Exhibit D (Notice to Borrower's Attorney Regarding Loan Servicing Options) and Exhibit D–1 (Notice to Borrower Regarding Loan Service Options) of this subpart, which are attached to the loan servicing notices and further explain the interrelationship of the loan servicing programs to the bankruptcy petitions filed under chapters 7, 11, 12 and 13 of the Bankruptcy Code. While the Agency will continue to use these types of specialized notices, there is no statutory requirement that these types of notices be sent. Since these matters involve internal operating procedures, the requirement will be contained in the Agency's Instructions only, with the regulation referencing only that a form letter will be sent. Similarly, the Agency has removed Exhibits D and D–1 from this subpart. Since these documents are informational cover letters sent with the notices, the Agency is not required to publish them.

Furthermore, this rule makes minor wording changes, redesignates some numbered paragraphs and revises references to the Farmers Home Administration (FmHA) to reference FSA.

List of Subjects in 7 CFR Part 1962

Government property, Livestock, Loan programs—Agriculture, Personal property—crops, Rural areas.

Accordingly, it is proposed that 7 CFR part 1962 be amended as follows:

PART 1962—PERSONAL PROPERTY

1. The authority citation for 7 CFR part 1962 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480

Subpart A—Servicing and Liquidation of Chattel Security

2. Section 1962.47 is revised to read as follows:

§ 1962.47 Bankruptcy and insolvency.

(a) [Reserved]

(b) Farm Credit Programs borrowers.

(1) When the local Agency loan servicing official becomes aware that a Farm Credit Program borrower has filed bankruptcy, the attorney of the borrower will be notified in writing of the borrower's remaining servicing options. The attorney of a borrower who is 90 days delinquent on their chapter 11, chapter 12 or chapter 13 reorganization plan will also be notified in a similar fashion. When borrowers are under the jurisdiction of the bankruptcy court and wants to be considered for loan servicing, they must meet the following conditions:

(i) The borrower must complete and return to the Agency an Acknowledgement of Notice of Program Availability and any application forms requested by the Agency within 60 days from the borrower's attorney's receipt of the notice; and

(ii) The borrower's attorney must request, in writing, servicing on behalf of the borrower within the 60-day time period. The Agency will consider this request to be an acknowledgment that the Agency will not be interfering with any rights or protections under the Bankruptcy Code and its automatic stay provisions. The Agency's processing of the application may include consideration of primary and preservation loan servicing options available under the applicable statutes and regulations, notification of the Agency's decision on the request and application for servicing, and holding any mediation, meetings or appeals requested by the borrower.

(2) If a borrower operating under a confirmed bankruptcy plan desires to apply for loan servicing and qualifies for servicing under the Agency's regulations, the borrower may be required to obtain modification of the bankruptcy reorganization plan.

(3) In chapter 7 cases, the Agency will not provide Primary Loan Servicing to a borrower discharged in bankruptcy, unless the borrower reaffirms the entire Agency debt. If the chapter 7 debtor wants to reaffirm the debt, the Agency will accept the reaffirmation if permitted by the court. If the Agency debt is reaffirmed, the loan servicing application will be processed in accordance with subpart S of part 1951 of this chapter. If the borrower reaffirms the Agency debt in order to be considered for restructuring but is later denied restructuring, the borrower may revoke the reaffirmation. No reaffirmation is necessary for any discharged chapter 7 borrower to be eligible for Preservation Loan Service Programs in accordance with subpart S of part 1951 of this chapter.

(c) [Reserved]

(d) Liquidation.

(1) If a borrower's bankruptcy is dismissed and the account was not previously accelerated, the borrower will be notified of remaining Agency servicing options if any. When the bankruptcy is dismissed and liquidation of an account is necessary, liquidation will be conducted in accordance with § 1962.40 of this subpart and § 1965.26 of subpart A of part 1965 of this chapter as appropriate, except that the Notice of the Availability of Loan Service Programs and Debt Settlement Programs for Delinquent Farm Borrowers with attachments will only be sent to the borrower if they were not previously sent to the borrower or the borrower's attorney.

(2) In chapter 11, 12, or 13 reorganizations, if liquidation is necessary while the bankruptcy is pending, the borrower's attorney will be sent a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers with attachments if allowed by the Bankruptcy Code and if not previously sent to the borrower's attorney.

(3) In chapter 11, 12 or 13 cases, if liquidation is necessary after the case is closed, the borrower will be sent a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers with attachments if not previously sent to the borrower's attorney and if not prohibited by the provisions of the Bankruptcy Code. If an application for servicing is received under this paragraph, it will be processed in accordance with subpart S of part 1951 of this chapter. If the borrower does not qualify for loan servicing, the account will be accelerated.

(4) In chapter 7 cases, after discharge loans will be liquidated if the borrower has not reaffirmed the debt and the property is no longer part of the estate. Liquidation may proceed prior to discharge if allowed by the court. Borrowers will be sent a letter and a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers with attachments if the borrower or the borrower's attorney was not previously so notified. If these notices were sent previously, the borrower will be sent an acceleration notice.

* * * * *

3. Exhibit D is removed.

4. Exhibit D–1 is removed.

Signed in Washington, DC, on July 8, 1996.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 96–18251 Filed 7–17–96; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AAL–13]

Proposed Revision of Class E Airspace; Homer, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action will revise Class E airspace at Homer, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 21 at Homer Airport, AK, has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Homer, AK.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–13, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AAL–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Homer, AK, due to the creation of a GPS instrument approach to RWY 21. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas 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 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in

this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''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, when promulgated, 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).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Homer, AK [Revised]

Homer Airport, AK
(lat. 59°38′42″ N, long. 151°28′42″ W)
Kachemak NDB
(lat. 59°38′29″ N, long. 151°30′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Homer Airport and within 2.5 miles each side of the 220° bearing of the Kachemak NDB extending from the 6.7-mile radius of the airport to 7.7 miles southwest of the airport, and within 2 miles each side of the 070° bearing from the airport extending to 9 miles east of the airport; excluding that airspace north of a line 2.5 miles north and parallel to Runway 3–21.

* * * * *

Issued in Anchorage, AK, on July 11, 1996.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–18273 Filed 7–17–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–AAL–15]

Proposed Revision of Class E Airspace; Bettles, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises the Class E airspace at Bettles, AK. The development of the Global Positioning (GPS) instrument approach to Bettles Airport, AK has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Bettles, AK.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–15, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AAL–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Bettles, AK. This action is necessary to accommodate a new GPS instrument approach to Runway 1 at Bettles Airport, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas for an airport are published in paragraph 6002 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The

Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''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, when promulgated, 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).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Bettles, AK

Bettles Airport, AK
(lat. 66°54′55″ N., long. 151°31′41″ W.)
Bettles VORTAC
(lat. 66°54′18″ N., long. 151°32′10″ W.)

Within a 4.1-mile radius of the Bettles Airport and within 4 miles west of the Bettles VORTAC 227° radial extending from the 4.1-mile radius to 12 miles southwest of the airport and within 4 miles each side of the Bettles VORTAC 212° radial extending from the 4.1-mile radius to 12 miles southwest of the airport and within 2.9 miles each side of the Bettles VORTAC 026° radial extending from the 4.1-mile radius to 7.4 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

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Issued in Anchorage, AK, on July 11, 1996.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 16, 17, 18 and 19

Futures Commission Merchants, Clearing Members and Foreign Brokers; Option Large Trader Reports Daily Filing Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing to amend its regulations to require that futures commission merchants, clearing members and foreign brokers (firms) file option large trader reports with the Commission on a daily basis. The proposed amendments specify a joint option and futures reporting level, a joint record format for reporting the information in machine-readable form, and an earlier time for submission of the data. A number of these requirements are proposed with the view that the Commission will be able to provide large trader data to the exchanges. Currently, firms report option and futures large trader data to the exchanges and futures data to the Commission. Reporting burdens in the industry may be reduced if firms report data to a single source that in turn distributes the information to all regulators or self-regulatory organizations.

The Commission is also in the process of obtaining new computer hardware and rewriting the software for its market surveillance system. In view of this, the Commission is requesting comment from the industry on any standards it might adopt that would make large trader reporting more efficient for the industry. Last, the Commission is proposing amendments to rule 18.04 to obtain CFTC form 40s from reporting traders only on special call. This would mirror current Commission practice with respect to this form.

DATES: Comments on this proposed rulemaking should be submitted on or before September 16, 1996.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, and should make reference to ''option large trader reports,'' telephone (202) 418–5100.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone (202) 418–5310.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission employs a comprehensive market surveillance system which is designed to maintain freely competitive markets by detecting and preventing threats of price manipulation or other major market disruptions caused by abusive trading practices. As part of the system, the Commission's Division of Economic Analysis operates an extensive data-gathering system which relies heavily on computer support. Regulations concerning this system require reports from three primary sources: contract markets under Part 16 of the regulations; futures commission merchants, clearing members, and foreign brokers (firms) under parts 17 and 21 of the regulations; and individual traders under parts 18 and 19 of the regulations. 17 CFR parts 16 through 21 (1995).

The Commission is proposing amendments to these regulations which will require firms to report daily option positions of large traders in addition to futures positions directly to the Commission. The proposed rule changes also delete the current requirement that contract markets provide option large trader (OLT) data on a weekly basis. Since the Commission is also in the process of reengineering software for its surveillance system to run in a client-server environment rather than on a mainframe computer, it is making proposals and asking for recommendations to make its requirements for electronic reporting consistent with standards in use by the industry.

An overall review of the reporting system indicates that additional amendments to the regulations may be proposed. These include proposed changes to the reporting levels in rule 15.03 and amendments to Part 17 of the regulations to give additional guidance

to firms when reporting accounts that are owned and/or controlled by two or more persons. However, since these regulations are not concerned with daily reporting of option positions, any proposed changes to them will be included in a separate rulemaking proposal.

II. Daily and Weekly Large Trader Data

Part 17 of the Commission's regulations requires that firms submit a daily report to the Commission with respect to futures positions in all special accounts on their books.[1] Information required to be provided to the Commission includes quantities of reportable futures positions, exchanges of futures for cash, and delivery notices issued or stopped by each special account.[2] Firms assign a reporting number to the special account and report all information to the Commission using this number.[3] The regulations also specify the format for data that is reported on machine-readable media and the type of data processing media that is compatible with Commission computer systems.[4] Additionally, firms must file a CFTC form 102 showing the information specified under § 17.01 of the regulations for each special account.[5] This information identifies persons who have a financial interest in or trading control of a special account, informs the Commission of the type of account that is being reported, and gives preliminary information whether positions and transactions are commercial or noncommercial in nature.

With regard to options, however, the Commission receives large trader data only on a weekly basis. Part 16 of the regulations requires that contract markets provide the long and short put or call positions for each option trader controlling a reportable position as of the close of business on Tuesday.[6] Contract markets provide the Commission with the data by account number and supply a CFTC form 102 to identify owners and controllers of the account. Generally, the rules requiring weekly reporting of OLT data were in place at the inception of the Commission's three-year pilot program for domestic exchange-traded commodity options.[7] Due to the growth in the trading of exchange-traded options and, since the same persons tend to hold both large futures and option positions, the Commission does not believe that its current requirements concerning large trader reporting are adequate.

The Commission has long recognized the interaction that exists between the markets for trading futures and those for trading options on futures. In April of 1992, for example, the Commission proposed rules that would unify speculative position limits on futures with those on options for the commodities specified in Part 150 of the regulations, 57 FR 12766 (April 13, 1992).[8] In this release, the Commission found that price movements in the two markets are highly related so that viewing options and futures together more readily reflects the economic reality of a trader's position. The Commission noted that:

> * * * options in certain combinations create synthetic futures. Moreover, these, or other combinations, may be spread or offset against actual futures positions. Thus, through a variety of spread or arbitrage transactions, positions in one market may have a direct and immediate impact on pricing in the other.
>
> 57 FR at 12769

Trading in options on futures grew to over 100 million contracts during 1994, and option position sizes held by individual traders have grown correspondingly. Currently, it is impossible to assess relationships between price moves and trader positions without knowing both the traders' futures and option positions. Adequate surveillance requires that these relationships be examined on a day-to-day basis. In view of this, the Commission is proposing to collect option positions of large traders on a daily basis.

The Commission must, of course, determine whether it will require daily reports from the exchanges or obtain the information directly from reporting firms. As noted above, exchanges currently supply the Commission with weekly OLT data. A survey of the exchanges indicates, however, that not all exchanges collect option large trader data on a daily basis. Moreover, although the option data are currently provided by exchanges immediately after they process incoming reports from their members, the data are not timely for market surveillance. Most exchanges provide the data to the Commission during the afternoon of the Wednesday following the Tuesday report date for the positions. Due to CFTC processing capacity restraints, OLT data are processed overnight and not available for analysis until the following morning. Exchange members, however, provide OLT data to the exchanges early in the morning on the day following the OLT position report date. Presumably, reporting firms could provide data directly to the Commission at about the same time and, in its new processing environment, the Commission will be able to access and analyze the data immediately. The process of obtaining data from the exchanges is also cumbersome and may impose a significant additional burden on the exchanges, particularly with respect to providing the Commission with form 102s to identify accounts and in obtaining corrections to the OLT data.

The Commission is also mindful of the additional burden that may be placed on reporting firms if it collects OLT data directly from them since, in addition, they must provide data to the exchanges. The burden on firms would be reduced if the Commission acts as a central collection point for large trader data and distributes them to the exchanges. Reporting firms through the operations committees of the Futures Industry Association (FIA) recommended this approach to Commission staff in 1991.[9] Since the Commission is obtaining new computer hardware and rewriting its software, the Commission is considering requirements that will allow it to act as a central collection point for large trader data. Commission staff have held preliminary discussions with exchange staff who expressed interest, if the needs of the individual exchanges could be met.

In view of the above, the Commission is proposing amendments to its reporting rules that require firms to report both futures and option large

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[1] Special account means any commodity futures or option account in which there is a reportable position, 17 CFR 15.00 (1995). Firms report futures information to the Commission and futures and option information to the exchanges.

[2] A reportable position is any open position held or controlled by a trader at the close of business in any one futures contract of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations, 17 CFR 15.03 (1995).

[3] The firm's reporting number may be the account number carried on its books. However, the number may refer to a collection of accounts that are owned and/or controlled by the same person.

[4] See rule 17.00(g) for a description of the file characteristics and 15.00(l) for a definition of compatible data processing media, 17 CFR 15.00(l) and 17.00(g) (1995).

[5] 17 CFR 17.01 (1995).

[6] 17 CFR 16.02 (1995). A reportable option position is defined as any open contract position on any one contract market in the put option or separately in the call option of a specified option expiration date which exceeds 50 contracts. 17 CFR 15.00(b)(2) (1995).

[7] 46 FR 54500 (November 3, 1981).

[8] The Commission previously requested comments on the concept of unifying option and futures speculative limits. See 56 FR 37049 (August 2, 1991). The commodities listed in Part 150 include grains, soybeans, soybean products, and cotton.

[9] See the ''Report on the Commission's Large Trader Reporting System'' prepared by the Division of Economic Analysis, January 1992, pp. 23 and 24.

trader data to the Commission on a daily basis. These amendments involve redefining reporting levels, establishing joint reporting of futures and option data and changing the current format for reporting data on machine-readable media. In making the specific amendments discussed below, the Commission is taking into account certain requirements expressed by staff of the various exchanges.

A. Reporting Levels

As noted above, Commission rules 15.00(b) and 15.03 define reportable levels in futures and options. The Commission is not changing its definition of a reportable futures position. However, it is proposing that an option position be considered reportable if the aggregate of all open contract positions of a trader in all options that exercise into the same futures expiration month exceeds the reporting levels specified in rule 15.03 for any one option quadrant.[10] Commission staff have functionally adopted this definition when processing exchange-supplied OLT data. If an exchange reports an option account that has previously been reported, or if the position is reportable according to the above definition, the account is further processed. The Commission has found that this method of processing OLT data gives satisfactory information about large option traders and greatly reduces the number of form 102s it requests from the exchanges. The Commission intends to continue this front-end processing of OLT data if firms report directly to the Commission. Thus, firms can report OLT data at lower reporting levels or report all OLT data and the Commission will keep and process only that which is appropriate.

B. Reporting Futures and Options on a Combined Basis

Commission regulations currently require that firms provide only large trader positions that are of a reportable size. If a trader holds a reportable position in one future month of a commodity on a contract market and a position which is not of a reportable size in another future month, only the larger position is required to be reported. A number of the exchanges, however, require that both positions be reported.[11] For such exchanges, this type of reporting applies to both futures and options. Firms must report all option positions and all futures positions in an account to the appropriate exchange, if either an option position or a futures position in the account meets the exchange's definition of reportability. The Commission is proposing to amend rule 17.00 to require this type of reporting. This will meet exchange requirements if in the future they choose to obtain data from the Commission rather than from firms.[12]

C. Record Formats for Dial-Up Transmissions and Machine Readable Media

The Commission receives about 95 percent of its futures large trader data via dial-up transmission or on machine-readable media. The record formats for reporting in this manner are contained in rule 17.00(g).[13] In proposing changes to these formats to accommodate option data, the Commission is seeking to minimize programming changes that firms may incur with adoption of a new reporting format and to collect a set of data that will be useful to each exchange for their large trader reporting system. This can be accomplished by adopting a format used by at least one of the major exchanges that includes all data fields used by other exchanges. Any of these other exchanges that elect to obtain large trader data from the Commission will be able to convert from the Commission's format to their own.

A review of record formats used by the exchanges indicates that although they differ the formats necessarily contain similar information for collecting large trader data. The formats used by two of the exchanges are more expansive than others, allowing for identification of flexible products in addition to data used by other exchanges. One of these formats contains all information in a single record and may be preferable since the Commission is proposing to use the same record format to report different types of information. In view of this, the Commission is proposing to adopt the record format shown below.

Record layout			Name
Beginning column	Length	Type*	
1	2	AN	Report Type.
3	3	AN	Reporting Firm.
6	2	—	Reserved.
8	12	AN	Account Number.
20	8	AN	Report Date.
28	2	AN	Exchange Code.
30	1	AN	Put or Call.
31	5	AN	Commodity Code (1).
36	8	AN	Expiration Date (1).
44	7	S	Strike Price.
51	1	AN	Exercise Style.
52	7	N	Long-buy-Stopped.
59	7	N	Short-Sell-Issued.
66	5	AN	Commodity Code (2).
71	8	AN	Expiration Date (2).
79	2	—	Reserved.

*AN—Alpha-Numeric.
N—Numeric.
S—Signed numeric.

1. *Report Type.* This report format will be used to report three types of data: Long and short futures and option positions, futures delivery notices issued and stopped, and exchanges of futures for physicals bought and sold. Valid values for the report type are ''RP'' for reporting positions, ''DN'' for reporting delivery notices, and ''EP'' for reporting futures for physicals.

2. *Reporting Firm.* Currently, the Commission assigns a five-digit number to each firm which is used for reporting. See rule 17.00(g)(3)(i). This assignment may not be necessary since all members of a clearing house are already identified by a number that is used for reporting to the clearing house or the exchange. The Commission is proposing to use the clearing member number in conjunction with an exchange number to identify reporting firms. If a firm is not a clearing member, the Commission is proposing that it assign a three-character alpha-numeric identifier agreed to by the exchanges.

3. *Account Number.* This is the same number that is currently assigned to an account by the firm for purposes of reporting. See rule 17.00(g)(3)(iii).

4. *Report Date.* The Commission is proposing that the report date include the full four-character year rather than the last two characters. The format is YYYYMMDD, where YYYY is the year, MM is the month, and DD is the day of the month.

5. *Exchange.* This is proposed as a two-character field used to identify the exchange on which a position is held.

[10] An option quadrant is considered a long call, short call, long put or short put.

[11] Exchanges that require this type of reporting include the Chicago Board of Trade (CBT), the Chicago Mercantile Exchange (CME), and the New York Mercantile Exchange (NYME).

[12] Since the Commission is proposing that rule 17.00 be amended to require that options be reported by strike prices it is also proposing conforming amendments to rule 17.04 to require that the originator of an omnibus account report option positions by strike price to the firm that carries the account.

[13] 17 CFR 17.00(g) (1995).

The Commission is proposing that valid values be as follows:

01	Chicago Board of Trade.
02	Chicago Mercantile Exchange.
03	MidAmerica Commodity Exchange.
06	Coffee, Sugar and Cocoa Exchange.
07	Comex Division of NYME.
08	Kansas City Board of Trade.
09	Minneapolis Grain Exchange.
10	Philadelphia Board of Trade.
12	New York Mercantile Exchange.
13	New York Cotton Exchange.
15	New York Futures Exchange.

6. *Put-Call Code.* Valid entries would be ''C'' for a call option and ''P'' for a put option. For futures, the field is blank.

7. *Commodity (1).* Currently, the Commission assigns a six-digit contract market code for reporting. This appears unnecessary since the exchanges already assign a commodity code for their own reporting. The Commission is proposing to use the exchange code assigned to the futures or option contract pertaining to the reported position. This may simplify reporting for firms.

8. *Expiration Date (1).* The date format is YYYYMMDD and represents the expiration date or delivery date of the reported futures or option contract. For date-specific instruments, such as flexible products, the full date must be reported. For other options and futures, this field is used to report the expiration year and month for an option contract or a delivery year and month for a futures contract. The day portion of the field for these contracts (''DD'') contains spaces.

9. *Strike Price.* This is proposed as a signed numeric field for reporting option strike prices. The strike prices should be right-justified and the field zero-filled. For futures, the field is left blank.

10. *Exercise Style.* Valid values for this field are ''A'' for American style options, i.e., those that can be exercised at any time during the life of the options and ''E'' for European, i.e., those that can be exercised only at the end of an option's life. This field will be required only for flexible instruments or as otherwise specified by the Commission. The Commission is proposing that all data be reported in contracts. Currently, data for the grains and soybean futures markets are reported in thousand bushels. Data reported by the exchanges for options on futures contracts in these markets, however, is reported in contracts. It would be preferable if all data pertaining to these markets are reported in the same units.

11. *Long-Buy-Stopped (Short-Sell-Issued).* When report type is ''RP'', this field represents long (short) positions open at the end of a trading day. When report type is ''DN'', this field represents delivery notices stopped (issued) on behalf of the account. When report type is ''EP'', this field represents purchases (sales) of futures for cash for the account. The Commission is proposing that all data be reported in contracts. Currently, data for the grains and soybean futures markets are reported in thousand bushels. Data reported by the exchanges for options on futures contracts in these markets, however, is reported in contracts. It would be preferable if all data pertaining to these markets are reported in the same units.

12. *Commodity (2).* This is the exchange-assigned commodity code for a futures contract or other instrument that a position is exercised into from a date specific or flexible option.

13. *Expiration Date (2).* Similar to other dates, the format is YYYYMMDD and represents the expiration date or delivery month and year of the future or other instrument that a position is exercised into from a date-specific or flexible option.

D. Time and Place for Filing Reports

Commission rule 17.02 currently specifies different times for reporting large trader data depending on the media used for reporting.[14] If forms are used, they must be transmitted to the appropriate regional office by 9 a.m. If the data are supplied on machine-readable media, such as computer tape or diskette, the data must be supplied by 10:30 a.m. If the data are transmitted electronically, the data must be supplied by 11 a.m.[15]

As noted above, exchanges generally receive large trader data earlier than the Commission. Staff for several of the exchanges indicate that they have a 9 a.m. cutoff time. Another exchange apparently receives data by 7 a.m. It would be beneficial for the Commission's market surveillance program if all reports were received at an earlier time. In addition, if the Commission is to act as a central collection point for large trader data, it must be able to meet exchange deadlines. In view of this, the Commission is proposing to amend rule 17.02 so that all large trader reports are required to be submitted to the Commission by 9 a.m. or at such earlier time as specified by an exchange that is receiving data from the Commission for contract markets on that exchange.

E. Filing Reports Electronically and the Definition of Compatible Data-Processing Media

Unless otherwise allowed by the Commission, firms must report large trader data on compatible data-processing media.[16] This form of reporting is efficient, since paper reports need not be filled out and filed and key-entry of the data received is not required. A significant number of small firms, however, currently have an exception to file paper reports. The amount of data filed by each firm is small, accounting in total for less than five percent of all large trader data collected by the Commission.

The Commission is concerned, however, that the amount of data submitted on hard-copy reports may increase appreciably if options are reported to the Commission. Since reporting OLT positions to the Commission is more data-intensive than reporting futures positions, there is concern that the number of existing staff will be inadequate to key-enter both futures and option large trader data in a timely manner. In view of this, the Commission may be more restrictive in allowing firms to report in hard-copy format. Since personal computers are becoming less expensive, it may not be burdensome for firms to key-enter large trader data and transmit the data to the Commission. The Commission is seeking comment on the magnitude of the burden this may impose on smaller firms and whether assistance, such as software development, could be provided by Commission staff to ameliorate this burden.

If firms file reports electronically, they must do so on compatible data-processing media. This is defined in rule 15.00(l) as:

1. Unblocked, nine-track, 1600 BPI magnetic tape using EBCDIC encoding and a standard IBM label;

2. Magnetic diskettes using a single-density IBM 3741 format; or

3. Asynchronous dial-up transmission at 1200 baud or synchronous dial-up transmission at 4800 baud.

The above-mentioned transmission methods are generally outdated. For example, cartridge has replaced tape and data transmission speeds are far faster than those specified above. The Commission is interested to know if standards for data transmission or media use have been adopted by members of the futures trading industry, and is seeking comment on how best to

[14] In the discussion that follows, times are eastern time for markets located in that time zone and central time for all other markets.

[15] A number of firms that transmit data electronically provide the Commission with reports substantially earlier than its 11:00 a.m. cutoff time.

[16] 17 CFR 17.00(a) (1995).

define acceptable data-processing media.

F. Filing Form 102s

Since account identification information is provided on a form rather than electronically, the data are burdensome for firms to provide and costly for the Commission to process. This burden is compounded for reporting firms since the same form might have to be filed at different times with several exchanges as well as the Commission. Costs associated with filing this form appear to be the principal reason that firms desire to send information to a single regulator.

The Commission can of course act as a single collection point for this information as well as that pertaining to positions. The cost of doing so, however, may be high since the forms themselves will require copying and distribution to the exchanges. This cost could be minimized if the information were transmitted electronically to the Commission. Two exchanges, independent of this rulemaking, have started work in this area.

One exchange, the CME, has developed software that can be used on a reporting firm's computer system. The software allows for key-entry of account identification information which is collected in a file for subsequent transmission. Another exchange, the CBT, requires that member firms electronically transmit partial account identification information when an account is first reported. In either case, it appears that firms must key-enter the data rather than obtain it from other computer files they maintain.

At this time, the Commission is in the process of gathering more information to determine the manner in which it will proceed in this matter. Although its staff will be in further contact with the exchanges and reporting firms, the Commission is requesting comments and suggestions from the industry on either of the exchanges' approaches or viable alternatives to collecting account identification information electronically.

G. Proposed Implementation

The Commission expects that implementation of the proposed amendments to the regulations will occur over a period of time. Reporting firms must develop new formats for transmitting the combined option and futures data and new software programs to determine whether accounts are reportable. In addition, Commission staff will test data transmissions to ensure that formats are correct. In view of this, the Commission anticipates that it will make the amended rules effective six months after publication in the Federal Register of a final rulemaking in this matter. At that time, the requirement in part 16 that exchanges file weekly OLT data would be deleted.[17]

III. Other Exchange Reporting

In addition to OLT reports required by rule 16.02, exchanges must make clearing member reports under rule 16.00 and reports concerning volume, open interest and prices under rule 16.01.[18] All reports made by the exchanges must be on compatible data-processing media and are due to the Commission no later than 3 p.m. of the business day following the report date of the data. The data are submitted using a format and coding structure issued by the Office of the Executive Director.

A. Delta Factors and Settlement Prices

Included in the data provided under paragraph 16.01 are the settlement prices for option and futures contracts and delta-factors for option contacts.[19] Delta factors are necessary to convert option positions to a futures equivalent basis so that traders' futures and option positions can be viewed as an economic whole. Deltas must be available when option positions are reported in order to interpret the positions.

The Commission understands that delta factors are computed by an exchange or its associated clearing house after the close of trading and can be made available sooner than volume of trading and open interest figures. Settlement prices also are available shortly after the close of trading and their timely receipt is important to the Commission for its market and financial surveillance programs. In view of this, the Commission is proposing to amend rule 16.01 to require that exchanges electronically transmit delta factors and settlement prices for option and futures contracts by 7 a.m. on the day following the report date.[20] Commission staff will be in contact with the exchanges to discuss changes in record formats that amendments to the regulations may entail.[21]

B. Critical Dates

Since the inception of the pilot program for exchange-traded options, the format and coding instructions issued by the Office of the Executive Director have included fields for reporting certain dates associated with the terms and conditions of futures and option contracts. For futures contracts, this includes first and last notice dates and last trading day and for option contracts, expiration date. Although the exchanges provide these data, this requirement is not explicitly set forth in the Commission's regulations. Commission software makes extensive use of some of these dates for market surveillance purposes. In view of this, the Commission is proposing to amend rule 16.01 to require that the exchanges provide the first notice date and last trading date for futures contracts and the expiration date for option contracts.

C. Option Exercises and Assigns

Contract markets report the number of option contracts exercised both by clearing members under rule 16.00(a)(5) and for the entire market under rule 16.01(a)(5). The Commission is proposing to delete these requirements since the information is not important for its surveillance program.[22]

IV. Other Proposed Amendments

A. Cash Position Reports

The Commission requires that persons owning or controlling futures positions in commodities for which the Commission has established speculative limits file reports concerning their long and short cash positions, *i.e.*, stocks of the commodities owned and the quantity of their fixed-price purchase and sale commitments, 17 CFR part 19 (1995). These commodities include the grains, the soybean complex and cotton, 17 CFR part 150 (1995). The primary purpose for these reports is to determine if the futures positions of traders that exceed the Commission's speculative limits qualify as hedging as defined in § 1.3(z) of the Commission's regulations. Additionally, merchants and dealers in cotton must provide information on the quantity of their ''call purchases and

[17] The Commission is proposing to delete and reserve §§ 16.02 and 16.03. In addition, the Commission is proposing conforming amendments to rules 16.06 and 16.07 to remove references to deleted sections of part 16.

[18] 17 CFR 16.00, 16.01 and 16.02 (1995).

[19] Delta factors are used to equalize the exposure value of an option contract with that of the underlying future. Multiplying an option contract by a delta factor places the option on a comparable basis to the underlying futures contract in terms of value fluctuations. The absolute value of the deltas vary between 0 and 1.

[20] The report date is the date the data pertain to.

[21] These formats will change substantially because of the introduction of date-specific or flexible options.

[22] In addition, the Commission is proposing to delete the requirement in rule 16.01(a)(6) that contract markets provide the number of option contracts expiring unexercised.

sales.'' [23] Information concerning call purchases and sales is used as a basis for the Commission's weekly ''Cotton on Call'' report.

With the exception of call purchase and sale reports by merchants and dealers in cotton, reporting levels for cash position reports (CFTC forms 204 and 304) are set at the speculative limit levels defined in rule 150.2. 17 CFR 150.2 (1995).[24] Only futures positions and not option positions are considered when determining reportability for purposes of reports due under part 19. See rule 15.00(b)(1)(ii), 17 CFR 15.00 (1995). The Commission, however, amended part 150 so that the speculative limits set forth in rule 150.2 apply to the net long or net short combined futures and futures equivalent option position of a trader.[25] Given the purpose for reports filed under rule 19.01(a)(1), the Commission is proposing that these reports be provided only if a trader's net long or short combined futures and futures equivalent options position as defined in part 150 exceeds the level specified in rule 150.2.[26]

B. Submitting Form 40s

Under Part 18 of the regulations, traders who become reportable in futures must file a CFTC form 40, ''Statement of Reporting Trader,'' within ten business days following the day that the trader obtains a reportable position. Additional filings are made annually as specified in rule 18.04(d).[27] Traders who become reportable in options are required to file the form 40 only in response to a special call by the Commission.

Currently, when an account first becomes reportable in futures, the firm reporting the account files a CFTC form 102 that identifies all persons having a ten percent or more financial interest in the account and those persons who control the trading of the account.[28] Although all persons named on the form 102 may be considered a trader according to the Commission's definition in rule 15.00(e), Commission staff will determine a trader of primary interest and request a form 40 from that trader.[29] No actions are generally taken against traders who do not file an initial form 40 unless they fail to respond to the staff's written request. Similarly, Commission staff will request updates to form 40s by issuing a written request.[30] In view of the above, the Commission is proposing to amend rule 18.04 to require that traders file form 40's in response to a special call, thus reflecting the current operating procedure. Authority to make these calls will be delegated to the director of the Division of Economic Analysis. In proposing these amendments, the Commission expects that staff will continue to obtain initial form 40s from traders and updated form 40s on at least a twenty-four-month cycle for traders who continue in reporting status.

V. Related Matters

A. The Regulatory Flexibility Act (RFA)

The RFA requires that agencies, in proposing rules, consider the impact of those rules on small business. These amendments affect large traders and futures commission merchants and other similar entities such as foreign brokers and foreign traders. The Commission has defined ''small entities'' as used by the Commission in evaluating the impact of its rules in accordance with the RFA. 47 FR 18618–18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and futures commission merchants should not be considered to be small entities for purposes of the RFA. In this regard, the amendments to reporting requirements fall mainly upon futures commission merchants. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large, positions. Pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission invites comments from any firm which believes that these rules would have a significant economic impact upon its operations.

B. Paperwork Reduction Act (PRA)

The PRA of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission is submitting these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection and these amended rules, is as follows:

Average burden hours per response.....0.3607
Number of respondents 6,181
Frequency of response .....Daily

Persons wishing to comment on the information which would be required by these rules should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7304. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5170.

List of Subjects

17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

17 CFR Part 16

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 19

Brokers, Commodity futures, Reporting and recordkeeping requirements.

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[23] Call purchases and sales are unfixed price purchases and sales commitments transacted as a basis price referenced to a particular cotton futures delivery month.

[24] Merchants and dealers in cotton must file reports at the lower levels specified in rule 15.03. This lower level for cotton is to ensure adequate coverage of call sales and purchases on the ''Cotton on Call'' report. The Commission is not proposing amendments to this reporting level.

[25] 58 FR 17972 (March 30, 1993). Commission rules 150.1 (f)–(h) define futures equivalent and long and short positions as follows:

(f) Futures-equivalent means an option contract which has been adjusted by the previous day's risk factor, or delta coefficient, for that option which has been calculated at the close of trading and published by the applicable exchange under § 16.01 of this chapter.

(g) Long positions means a long call option, a short put option or a long underlying futures contract.

(h) Short positions means a short call option, a long put option or a short underlying futures contract.

[26] Conforming amendments are also being proposed to rule 15.01(d). 17 CFR 15.01(d) (1995).

[27] 17 CFR 18.04(d) (1995).

[28] 17 CFR 17.01 (1995).

[29] At times, Commission staff may request a form 40 from more than one person identified on the form 102, but this is rare. The Division would continue to maintain this authority under the rule as proposed and the proposed delegation authority.

[30] Paragraph 18.04(d) requires that if traders remain reportable, they update the form 40 after twelve months. Commission staff, however, have been requesting that form 40s be updated only if traders are in reporting status after a twenty-four-month period. An analysis of form 40 updates indicates that few form 40s show significant changes in the information contained on the form after a one-year period. This action has significantly reduced the number of form 40s required from traders with no adverse impact on the Commission's surveillance program.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act (Act), and in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1994), the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

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

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c (a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

2. Section 15.00 is proposed to be amended by revising paragraph (b) to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 21 of this chapter.

* * * * *

(b) Reportable position means:

(1) For reports specified in parts 17, 18 and § 19.00(a)(2) and (a)(3) of this chapter any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in § 15.03 of this part in either:

(i) Any one future of any commodity on any one contact market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market; or

(ii) Long or short put or call options that exercise into the same future of any commodity on any one contract market.

(2) For the purposes of reports specified in § 19.00(a)(1) of this chapter, any combined futures and futures-equivalent option open contract position as defined in part 150 of this chapter in any one month or in all months combined, either net long or net short in any commodity on any one contract market, excluding futures positions against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market, which at the close of the market on the last business day of the week exceeds the net quantity limit in spot, single or in all-months fixed in § 150.2 of this chapter for the particular commodity and contract market.

* * * * *

3. Section 15.01 is proposed to be amended by revising paragraph (d) to read as follows:

§ 15.01 Persons required to report.

* * * * *

(d) Persons, as specified in part 19 of this chapter, either:

(1) Who hold or control option and futures positions that exceed the amounts set forth in § 150.2 of this chapter for the commodities enumerated in that section, any part of which constitutes bona fide hedging positions (as defined in § 1.3(z) of this chapter); or

(2) Who are merchants or dealers of cotton holding or controlling positions for future delivery in cotton that equal or exceed the amount set forth in § 15.03.

PART 16—REPORTS BY CONTRACT MARKETS

4. The authority citation for Part 16 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6g, 6i, 7 and 12A.

§§ 16.02 and 16.03 [Removed and reserved]

5. Part 16 is proposed to be amended by removing and reserving §§ 16.02 and 16.03.

6. Section 16.00 is proposed to be amended by revising paragraph (a)(5) to read as follows:

§ 16.00 Clearing member reports.

(a) * * *

(5) For futures, the quantity of the commodity for which delivery notices have been issued by the clearing organization of the contract market and the quantity for which notices have been stopped during the day covered by the report.

* * * * *

7. Section 16.01 is proposed to be amended by removing paragraphs (a)(5) and (a)(6) and redesignating paragraph (a)(7) as (a)(5); by redesignating paragraph (c) as (b)(3); and, by adding a new paragraph (c) and revising paragraph (d) to read as follows:

§ 16.01 Trading volume, open contracts, prices and critical dates.

* * * * *

(c) *Critical dates.* Each contract market shall report to the Commission for each futures contract the first notice date and the last trading date and for each option contract the expiration date in accordance with paragraph (d) of this section.

(d) *Reports to the Commission.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information specified in paragraphs (a), (b) and (c) of this section as follows:

(1) Using a format and coding structure approved in writing by the Commission or its designee in both hard-copy form and on compatible data processing media;

(2) When each such form of the data is first available but not later than 7 a.m. on the business day following the day to which the information pertains for the delta factor and settlement price and not later than 3 p.m. for the remainder of the information; and

(3) Except for dial-up data transmission, at the regional office of the Commission having local jurisdiction with respect to such contract market.

8. Section 16.06 is proposed to be revised to read as follows:

§ 16.06 Errors or omissions.

Contract markets shall file with the Commission on compatible data processing media using a format and coding structure approved by the Commission or its designee, corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00 and 16.01.

9. Section 16.07 is proposed to be revised to read as follows:

§ 16.07 Delegation of authority to the Director of the Division of Economic Analysis and the Executive Director.

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraph (a) of this section to the Director of the Division of Economic Analysis and the authority set forth in paragraph (b) of this section to the Executive Director to be exercised by such director or by such other employee or employees of such director as may be designated from time to time by the director.

(a) Pursuant to §§ 16.00(b), and 16.01(d) the authority to determine whether contract markets must submit data in machine-readable form or hard-copy or both, and the time and Commission office at which such data may be submitted where the director determines that a contract market is unable to meet the requirements set forth in the regulations.

(b) Pursuant to §§ 16.00(b)(1), 16.01(d)(1), and 16.06, the authority to approve the use of data processing media other than compatible data processing media as that term is defined in § 15.00(1) of this chapter and to approve the format and coding structure used by contract markets.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

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

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 68, 7 and 12a unless otherwise noted.

11. Section 17.00 is proposed to be amended by revising paragraphs (a), (d), (e), and (g) to read as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

(a) *Special Accounts—Reportable futures positions, delivery notices and exchanges of futures for cash.* (1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully-disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made on compatible data processing media in accordance with the format and coding provisions set forth in paragraph (g) of this section. The report shall show each futures position, separately for each contract market and for each future, and each put and call option position separately for each contract market, expiration month and strike price in each special account as of the close of market on the day covered by the report and, in addition, the quantity of exchanges of futures for physicals and the number of delivery notices issued for each such account by the clearing organization of a contract market and the number stopped by the account.

(2) A report covering the first day upon which a special account is no longer reportable shall also be filed showing the information specified in paragraph (a)(1) of this section.

* * * * *

(d) *Net positions.* Futures commission merchants, clearing members and foreign brokers shall report positions net long or short in each future of a commodity and each strike price of a put or call option for each expiration month in all special accounts, except as specified in paragraph (e) of this section.

(e) *Gross positions.* In the following cases, the futures commission merchant, clearing member or foreign broker shall report gross long and short positions in each future of a commodity and each strike price of a put or call option for each expiration month in all special accounts:

(1) Positions which are reported to an exchange or the clearinghouse of an exchange on a gross basis, which the exchange uses for calculating total open interest in a commodity;

(2) Positions in accounts owned or held jointly with another person or persons;

(3) Positions in multiple accounts subject to trading control by the same trader; and

(4) Positions in omnibus accounts.

* * * * *

(g) *Media and file characteristics.* (1) Except as otherwise approved by the Commission or its designee, all required records shall be submitted together in a single file. Each record will be 80 characters long. Specific record formats are shown in tables below. There are two different record descriptions. The file must begin with a type I record identifying the sequence of type II records that follow as large trader data.

(2) The required records are as follows:

(i) Type I record.

Beginning column	Length	Type*	Value or name
1	10	AN	"X 01 Reg".
11	8	AN	Report Date.
18	62	—	Spaces.

*AN—Alpha-numeric.
N—Numeric.
S—signed numeric.

(ii) Type II Record.

Record Layout	Beginning column		
	Length	Type*	Name
1	2	AN	Report Type.
3	3	AN	Reporting Firm.
6	2	—	Reserved.
8	12	AN	Account Number.
20	8	AN	Report Date.
28	2	AN	Exchange Code.
30	1	AN	Put or Call.
31	5	AN	Commodity Code (1).
36	8	AN	Expiration Date (1).
44	7	S	Strike Price.
51	1	AN	Exercise Style.
52	7	N	Long-Buy-Stopped.
59	7	N	Short-Sell-Issued.
66	5	AN	Commodity Code (2).
71	8	AN	Expiration Date (2).
79	2	—	Reserved.

(3) Field definitions are as follows:

(i) *Report Type.* This report format will be used to report three types of data: Long and short futures and option positions, futures delivery notices issued and stopped, and exchanges of futures for physicals bought and sold. Valid values for the report type are "RP" for reporting positions, "DN" for reporting notices, and "EP" for reporting futures for physicals.

(ii) *Reporting Firm.* The clearing member number assigned by an exchange or clearing house to identify reporting firms. If a firm is not a clearing member, a three-character alpha-numeric identifier assigned by the Commission.

(iii) *Account Number.* A unique identifier assigned by the reporting firm to each special account. The field is 0-filled with account number right-justified. Assignment of the account number is subject to the provisions of §§ 17.00 (b) and (c) and 17.01(a).

(iv) *Report Date.* The format is YYYYMMDD, where YYYY is the year, MM is the month, and DD is the day of the month.

(v) *Exchange.* This is a two-character field used to identify the exchange on which a position is held. Valid values are as follows:

01 ..... Chicago Board of Trade.
02 ..... Chicago Mercantile Exchange.
03 ..... MidAmerica Commodity Exchange.
06 ..... Coffee, Sugar and Cocoa Exchange.
07 ..... Comex Division of NYME.
08 ..... Kansas City Board of Trade.
09 ..... Minneapolis Grain Exchange.
10 ..... Philadelphia Board of Trade.
12 ..... New York Mercantile Exchange.
13 ..... New York Cotton Exchange.
15 ..... New York Futures Exchange.

(vi) *Put-Call Code.* Valid entries are "C" for a call option and "P" for a put option. For futures, the field is blank.

(vii) *Commodity (1).* An exchange-assigned commodity code for the futures or option contract.

(viii) *Expiration Date (1).* The date format is YYYYMMDD and represents the expiration date or delivery date of the reported futures or option contract. For date-specific instruments such as flexible products, the full date must be reported. For other options and futures, this field is used to report the expiration year and month for an option contract or a delivery year and month for a futures contract. The day portion of the field for these contracts contains spaces.

(ix) *Strike Price.* This is a signed numeric field for reporting option strike prices. The strike prices should be right-justified and the field zero-filled. Strike prices must be reported in the same formats that are specified by an exchange. For futures, the field is left blank.

(x) *Exercise Style.* Valid values for this field are "A" for American style options, i.e., those that can be exercised at any time during the life of the options; and "E" for European, i.e., those that can be exercised only at the end of an option's life. This field is required only for flexible instruments or as otherwise specified by the Commission.

(xi) *Long-Buy-Stopped (Short-Sell-Issued).* When report type is "RP", report long(short) positions open at the

end of a trading day. When report type is ''DN'', report delivery notices stopped (issued) on behalf of the account. When report type is ''EP'', report purchases (sales) of futures for cash for the account. Report all information in contracts. Position data are reported on a net or gross basis in accordance with paragraphs (e) and (d) of this section.

(xii) *Commodity (2).* The exchange assigned commodity code for a futures contract or other instrument that a position is exercised into from a date-specific or flexible option.

(xiii) *Expiration Date (2).* Similar to other dates, the format is YYYYMMDD and represents the expiration date or delivery month and year of the future or other instrument that a position is exercised into from a date-specific or flexible option.

* * * * *

12. Section 17.02 is proposed to be amended by revising paragraph (a) as follows:

§ 17.02 Place and Time of Filing Reports.

* * * * *

(a) For data submitted on compatible data processing media:

(1) At the Chicago Regional office for dial-up data transmission; at the Chicago or New York Regional Office for magnetic tape; and at the Chicago, New York or Kansas City Regional Office for magnetic diskettes.

(2) Not later than 9 a.m. on the business day following that to which the information pertains or for contract markets on an exchange that is receiving data from the Commission, at such earlier time as specified by the exchange.

* * * * *

13. Section 17.04 is proposed to be amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 17.04 Reporting omnibus accounts to the carrying futures commission merchant or foreign broker.

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant or foreign broker shall report to that futures commission merchant or foreign broker the total open long positions and the total open short positions in each future of a commodity, and, for commodity option transactions, the total open long put options, the total open short put options, the total open long call options, and the total open short call options for each commodity option expiration date and each strike price in such account at the close of trading each day. The information required by this section shall be reported in sufficient time to enable the futures commission merchant or foreign broker with whom the omnibus account is established to comply with Part 17 of these regulations and reporting requirements established by the contract markets.

(b) In determining open long and open short futures positions, and open purchased long and open granted short option positions, in an omnibus account for purposes of complying with § 17.00(f), § 1.37(b) and § 1.58 of this chapter, a futures commission merchant, clearing member or foreign broker shall total the open long positions of all traders and the open short positions of all traders in each future of a commodity and, for commodity option transactions, shall total the open put long options, the open short put options, the open long call options, and the open short call options of all traders for each commodity option expiration date and each strike price. The futures commission merchant, clearing member or foreign broker shall, if both open long and short positions in the same future are carried for the same trader, compute open long or open short futures positions as instructed below.

* * * * *

PART 18—REPORTS BY TRADERS

14. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a, and 19; 5 U.S.C. 552 and 552(b) unless otherwise noted.

15. Part 18 is proposed to be amended by adding a new § 18.03 as follows:

§ 18.03 Delegation of authority to the Director of the Division of Economic Analysis.

The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls on traders for information as set forth in §§ 18.00, 18.04 and 18.05 to the Director of the Division of Economic Analysis to be exercised by the Director or by such other employee or employees of the Director as may be designated from time to time by the Director.

16. Section 18.04 is proposed to be amended by removing paragraph (d) and by revising the introductory text to read as follows:

§ 18.04 Statement of reporting trader.

Every trader who holds or controls a reportable option or futures position shall after a special call upon such trader by the Commission or its designee file with the Commission a ''Statement of Reporting Trader'' on the form 40 at such time and place as directed in the call. All traders shall complete part A of the form 40 and, in addition, shall complete:

Part B—If the trader is an individual, a partnership or a joint tenant.

Part C—If the trader is a corporation or type of trader other than an individual, partnership, or joint tenant.

* * * * *

PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

17. The authority section for part 19 continues to read as follows:

Authority: 7 U.S.C. 6g(a), 6i and 12a(5), unless otherwise noted.

18. Section 19.00 is proposed to be amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 19.00 General provisions.

(a) * * *

(1) All persons holding or controlling options or futures positions that are reportable pursuant to § 15.00(b)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter,

* * * * *

(3) All persons holding or controlling positions that are reportable pursuant to § 15.00(b)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. Filings in response to a special call shall be made within one business day of receipt of the special call unless otherwise specified in the call. For the purposes of this paragraph, the Commission hereby delegates to the Director of the Division of Economic Analysis, or to such other person designated by the Director, authority to issue calls for series '04 reports.

* * * * *

Issued in Washington, DC., this 12th day of July, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–18262 Filed 7–17–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 169

RIN 1076–AD40

Rights-of-Way Over Indian Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The purpose of this rulemaking action is to revise the Rights-of-way over Indian Lands regulations. This was identified for reinvention under the National Performance Review. It is written in plain English to make the rule easier to read and understand for Indian landowners and realty staff.

DATES: Comments by interested parties must in writing and we must receive them September 16, 1996.

ADDRESSES: You must mail or hand carry your comments to Terrance L. Virden, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS 4513 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Alice Harwood, Acting Chief, Division of Real Estate Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS 4513 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The proposed rule has been rewritten to facilitate its use by the general public and the individual Indians affected by the rule. Sections that no longer apply have been deleted and sections added for clarification. No substantive revisions are proposed in this rule.

The authority to issue rule and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9, and delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the ''addresses'' section of this document.

The Department has determined that this rule:

- Does not have significant federalism effects.
- Will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not constitute a major Federal action significantly affecting the human environment, and no detailed statement is needed under the National Environmental Policy Act of 1969;
- Does not have significant takings implications in accordance with Executive Order 12630; and
- Is exempt by OMB from the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and does not require a review by the Office of Management and Budget.

List of Subjects in 25 CFR Part 169

Indians, lands.

For the reasons set out in the preamble, we propose to revise Part 169 of Title 25 of the Code of Federal Regulations, as follows:

PART 169—RIGHTS-OF-WAY OVER INDIAN LANDS

Sec.

Authority: 5 U.S.C. 301; 62 Stat. 17 (25 U.S.C. 323–328), and other acts cited in the text.

§ 169.1 What are the definitions of the terms used in this part?

Field Notes mean notes taken by the surveyor while surveying land for a right-of-way.

Individually owned land means land or any interest therein held in trust by the United States for the benefit of individual Indians, and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

Government owned land means land owned by the United States and under the jurisdiction of the Secretary of the Interior which was set aside for the use and benefit of Indians.

Secretary means the Secretary of the Interior or authorized representative acting under delegated authority.

Tribe means any Indian tribe, band, nation, pueblo, community, corporation, rancheria, colony, or other group of Indians.

Tribal land means land or any interest therein, title to which is held by the United States in trust for a tribe or title held by any tribe subject to Federal restrictions against alienation or encumbrance, and land reserved for Indian Bureau administrative purposes or lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18,1934 (48 Stat. 988; 25 U.S.C. 477).

§ 169.2 What is the purpose and scope of this regulation?

(a) Purpose: These regulations describe the procedures, terms and conditions under which rights-of-way over and across tribal land, individually owned land, and Government owned land, may be granted.

(b) Scope:

(1) Appeals from administrative actions under this part must follow the procedures described in part 2 of this chapter.

(2) These regulations do not cover the granting of rights-of-way upon tribal lands within a reservation for the purpose of constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission

lines or other works that constitute a part of any project for which a license is required by the Federal Power Act.

(c) For lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), the Federal Power Act provides:

(1) That a license must be issued to use tribal lands within a reservation.

(2) The license will contain conditions the Secretary deems necessary for the adequate protection and utilization of such lands; (16 U.S.C. 797(e)).

(3) Annual charges for the use of tribal lands under any license issued by the Federal Power Commission must be subject to the approval of the tribe (16 U.S.C. 803(e)).

§ 169.3 Do I need the consent of landowners for grants of right-of-way?

(a) Yes. You must have prior written consent from the tribe for a grant of right-of-way or permission to survey on tribal land.

(b) Yes. You must have prior written consent from the owner or owners of individually owned Indian lands for a grant of a right-of-way or permission to survey. You also must have approval from the Secretary.

(c) The Secretary may issue a permit to survey or a grant of right-of-way over and across individually owned lands without the consent of the individual Indian owners when:

(1) The individual owner is a minor or a person who is not of sound mind.

(2) The land is owned by more than one person and the owners or owners of a majority of interests consent to the grant.

(3) The whereabouts of the owner(s) is unknown, and the owner(s) of any interests or an owner of a majority interest whose whereabouts are known, consent to the grant.

(4) The heirs or devises of a deceased owner have not been determined.

(5) The owners are so numerous that it is impracticable to obtain their consent.

(6) When the right-of-way will cause no major damage to the owner or the land and can be adequately compensated for by monetary means.

§ 169.4 How do I get a permit to survey for a right-of-way across individually owned, tribal or government owned land?

(a) You must file a written application with the Secretary.

(b) You must describe the proposed project fully, citing purpose and general location, and the application must be accompanied by the written consents required by § 169.3.

(c) You must include documentation to show evidence of good faith and financial responsibility.

(d) Your application must be accompanied by a check or money order to cover twice the estimated damages which may occur as a result of the survey.

(e) You may submit a surety bond in lieu of a check or money order provided the company issuing the surety bond is licensed to do business in the State where the land is located.

(f) Your application must contain an agreement for payment to the United States, the owners of the land, and occupants of the land, against liability for loss of life, personal injury, and property damage occurring because of survey activities caused by you, your employees, contractors and their employees or subcontractors and their employees.

(g) If an agency of the Federal or State Government, or an instrumentality thereof, applies and is prohibited by law from depositing estimated damages in advance or agreeing to paying for damages, the requirement for a deposit may be waived providing the agency agrees in writing to pay damages as soon as they occur.

(h) An application filed by a corporation must be accompanied by:

(1) A copy of its charter or articles or incorporation duly certified by a State official of the State where the corporation was organized.

(2) A certified copy of the resolution or bylaws of the corporation authorizing the filing of the application.

(3) A certificate from a State official verifying that the applicant is authorized to do business in the State where the land is located if the applicant is incorporated out of State.

(4) A certified copy of the articles of partnership or association if an application is filed by an unincorporated partnership or association. If there is no certificate, this must be stated over the signature of each member of the unincorporated partnership or association.

(5) Proof of current financial responsibility and good faith will be sufficient, if you have previously filed an application accompanied by the required documents. You must reference the date and place of filing.

(i) The Secretary will write you a letter informing you whether or not you are granted permission to survey.

§ 169.5 How do I apply for a right-of-way?

You must submit a written application in duplicate. The application must do all of the following:

(a) Identify the use for the right-of-way.

(b) Cite the statute(s) under which it is filed and the width and length of the requested right-of-way.

(c) Include proof of your good faith and financial responsibility.

(d) If you are a corporation, you must follow the same procedures outlined in § 169.4(h) of this part.

(e) Your application must be accompanied by an affidavit agreeing to do all of the following:

(1) To construct and maintain the right-of-way in a workmanlike manner.

(2) To pay promptly all damages and compensation, in addition to the deposit due to the landowners and authorized users and occupants of the land for the survey, granting, and construction and maintenance of the right-of-way.

(3) To pay the landowners and authorized users and occupants against any liability for loss of life, personal injury or property damage arising from the construction, maintenance, occupancy or use of the lands by you, your employees, contractors and their employees, or subcontractors and their employees.

(4) To restore the lands as nearly as possible to their original condition upon the completion of construction.

(5) To clear and keep clear the right-of-way and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.

(6) To take soil and resource conservation, weed control, and protection measures on the land.

(7) To prevent and suppress fires on or near the lands to be occupied.

(8) To build and repair roads, fences, and trails that may be destroyed or damaged by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under.

(9) To restore as nearly as possible the land to its original condition upon revoking or terminating the right-of-way.

(10) To keep your address current. Corporations will provide the address of its principal place of business and of the names and addresses of its principal officers.

(11) If you are a corporation, you will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted. The Secretary may waive this requirement if you are the U.S. Government or a State Government or other part and prohibited by law from executing any of the above stipulations.

(12) You will inform the Bureau of Indian Affairs as to any assignment of right-of-way by providing the name and address of assignee.

§ 169.6 Am I required to submit maps?

Yes, an original and two copies of maps of definite location are required with each application. The width of the right-of-way must be clearly shown on the maps.

(a) You must file a separate map for each 20 mile section of right-of-way. The last section may include any excess of 10 miles or less.

(b) The scale should be 2,000 feet to an inch. Maps may be drawn to a larger scale when necessary, unless it makes the maps too cumbersome for convenient handling and filing.

(c) Maps must:

(1) show the sections, townships, and ranges affected;

(2) show the allotment number of each tract of allotted land affected; and

(3) clearly designate each tract of tribal land affected.

§ 169.7 What are the requirements for field notes?

You must submit field notes with each application.

Field notes must:

(a) appear along the line indicating the right-of-way unless this makes the maps too crowded and illegible;

(b) be filed separately and you must place a sufficient number of station numbers on the maps to make it more convenient to follow the field notes.

(c) be typewritten;

(d) be sufficiently complete to permit the line indicating the right-of-way to be readily retraced on the ground;

(e) show whether the line was run on true or magnetic bearings.

(1) If run on magnetic bearings, the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public survey lines) must be given.

(2) The 10-mile sections must be indicated and numbered on all lines of road submitted.

§ 169.8 How do I identify the location of my proposed right-of-way to a public survey?

(a) The terminal of the line of route must be fixed by reference of course and distance to the nearest existing corner of the public survey. The maps, the engineer's affidavit, and the certificate must show these connections.

(b) If termination of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant.

(c) The single bearing and distance from the terminal point to the corner must be computed and noted on the maps, in the engineer's affidavit, and in the certificate.

(d) The notes and all data for the computation of the traverse must be submitted.

§ 169.9 Can natural objects or monuments be used as terminal points?

(a) Connection with a natural object or a permanent monument which can be easily found and recognized, and will fix and perpetuate the position of the terminal point, can be used when the distance from an established corner of the public survey is more than 6 miles.

(b) The maps must show the position of such mark, course, and distance to the terminus.

(c) An accurate description must be made of the mark.

(d) Full data concerning the traverse, the engineer's affidavit, and the certificate on the maps must state the connections.

§ 169.10 How are maps and field notes relevant to township and section lines?

(a) The distance to the nearest existing corner must be noted when the line of survey crosses a township or section line of the public survey.

(b) The maps must show these distances and the station numbers at the points of intersections.

(c) The field notes must show these distances and the station numbers.

§ 169.11 What should affidavits and certificates contain?

(a) They must contain certification by the survey engineer and you of the accuracy of the survey and maps and a definite location must be written on the maps.

(b) They must designate by termini and length in miles and decimals, the line or route for which the right-of-way application is made.

(c) Maps covering roads built by the Bureau of Indian Affairs to be transferred to a county or State government must contain an affidavit indicating the accuracy of the survey, executed by the Bureau highway engineer in charge of road construction.

(d) A certificate must be submitted by the State or county engineer or other authorized officer accepting the right-of-way stating that the accuracy of the survey and maps is satisfactory.

§ 169.12 What is the consideration for right-of-way grants?

(a) Consideration for any right-of-way granted or renewed under this part must be no less than, but not limited to, the fair market value of the rights granted plus severance damages, if any, to the remaining estate.

(b) We will write a letter advising the landowners of the appraisal information to assist them in negotiations for a right-of-way or renewal.

(c) If approved, landowners or their representatives may waive in writing the consideration consisting of fair market value in the renewal or granting of rights-of-way.

§ 169.13 What other damages must I pay?

You will be required to pay all damages incident to the survey of the right-of-way or to the construction or maintenance of the facility for which the right-of-way is granted.

§ 169.14 What must I do to pay for the right-of-way and damages?

At the time of filing an application for right-of-way, you must:

(a) Deposit the total estimated dollar amount of consideration and damages with the Secretary.

(b) The deposit must include a dollar amount covering:

(1) consideration for the right-of-way;

(2) severance damages;

(3) damages caused during the survey; and

(4) estimated damages to result from construction less any deposit previously made.

(c) The amount deposited as consideration for the right-of-way over any parcel must not be less than the amount specified in the consent covering that parcel.

(d) If the amounts deposited are inadequate to compensate the owners, you must increase the deposit to an amount determined by the Secretary.

(e) The amounts deposited must be held in a ''special deposit'' account for distribution.

(f) Amounts deposited to cover damages resulting from survey and construction may be disbursed after the damages have occurred.

(g) Amounts deposited to cover considerations for the right-of-way and severance damages will be disbursed upon the granting for the right-of-way.

(h) Any monies not required for disbursement will be refunded to you promptly following receipt of the affidavit of completion of construction.

§ 169.15 How is the grant approval handled?

(a) If your application complies with the regulations, we will issue an approved conveyance document to grant your right-of-way.

(b) We will mail a copy of the conveyance document to you. Maps of definite location may be attached to and incorporated into the conveyance document by reference.

(c) The conveyance document will incorporate all conditions or restrictions.

(d) We may issue one conveyance document covering all of the tracts of land traversed by the right-of-way, or separate conveyance documents that cover one or several tracts included in the application.

(e) We will send a duplicate original copy of the conveyance documents, together with any other pertinent documents, to the office of records where they will be recorded and filed.

(f) You may proceed with the construction work as soon as you receive the approved conveyance document.

§ 169.16 Do I need to file an affidavit of completion?

(a) Yes. You must promptly file an affidavit of completion in duplicate, executed by the surveying engineer and certified by you.

(b) One copy of the affidavit will be sent to the office of record.

(c) Failure to file an affidavit will subject the right-of-way to cancellation. (See section 169.20 of this part)

§ 169.17 What happens if I need to change the location of my right-of-way from the original plan?

(a) You are required to file amended maps and field notes showing the new location.

(b) A right-of-way for the new route or location will be subject to all requirements of the original location, including consent, approval, damages, and payment of damages.

(c) You must submit necessary documents to extinguish the right-of-way at the original location.

(d) These documents will be sent to the office of record for recording and filing.

§ 169.18 Is there a specific time limit for approved right-of-way grants?

(a) Yes. All grants will be in the form of easements for the periods stated in the conveyance document.

(b) Rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323–328), have no time limitation, but rights-of-way for all other purposes will be for a period not to exceed 50 years. This will be reflected in the conveyance document.

(c) Rights-of-way covered under the Act are for:

(1) lines for railroads, telephone lines, telegraph lines;

(2) public roads and highways, access roads to homesite properties;

(3) public sanitary and storm sewer lines including sewage disposal and treatment plants; water control and use projects (including but not limited to dams, reservoirs, flowage easements, ditches, and canals);

(4) oil, gas, and public utility water pipelines (including pumping stations and related facilities), electric power projects, generating plants, switch yards, electric transmission and distribution (including poles, towers, and related facilities) ; and

(5) service roads and trails essential to any of the above uses.

§ 169.19 Can I renew right-of-way grants?

(a) Yes. You can submit an application for a renewal of the grant on or before the expiration date of any right-of-way granted for a limited term of years.

(b) If the renewal involves no change in the location or status of the original right-of-way grant, you can file with your application a certificate under oath setting out this fact.

(c) Your grant may be extended for a like term of years, upon payment of consideration.

(d) Your application for renewal will be treated the same as an original application, if any change in the size, type, or location is involved.

§ 169.20 Will I be notified if my right-of-way grant is terminated?

(a) Yes. All rights-of-way granted under these regulations may be terminated in whole or in part by 30 days written notice.

(b) We will mail you a notice at your last known address.

(c) The right-of-way may be terminated for any of the following causes:

(1) Failure to comply with any terms or conditions of the grant or applicable regulations;

(2) Nonuse of the right-of-way for a consecutive 2-year period for the purpose for which it was granted; or

(3) Abandonment of the right-of-way.

(d) You must correct the causes for termination within 30 days from the date of the notice.

(e) If you fail to correct the causes for termination, an appropriate document terminating the right-of-way will be issued.

(f) The document will be sent to the office of record for recording and filing.

§ 169.21 Who is responsible for reporting condemnation actions involving individually owned Indian lands?

Officials of the Bureau of Indian Affairs must report the facts relating to any condemnation action to obtain a right-of-way over individually Indian owned lands to the appropriate officials of the Interior Department so that action may be taken to safeguard the interests of Indians.

§ 169.22 How do I get permission to construct a service line across individually owned Indian land?

(a) You must sign an agreement between the landowner, a legally authorized occupant, or user of individually owned land and yourself, before you begin any work to construct a service line across individually owned land.

(b) There will be limitations on the service lines, such as:

(1) Power lines will be limited to voltages of 14.5 kv. or less; and

(2) Lines for irrigation pumps, commercial or industrial uses will be limited to a voltage not to exceed 34.5 kv.

(c) The service line will supply the individual owner, authorized occupant, or user of land, including schools and churches with:

(1) telephone;

(2) water;

(3) electric power;

(4) gas; and

(5) other utilities.

(d) An agreement as required in paragraph (a) of this section must be signed and in place before you can begin any work for the construction of a service line across tribal land.

(e) The service line will supply the owner, an occupant or user of tribal land with any of the utilities specified in paragraph (c) of this section.

(f) An agreement under paragraph (a) of this section will not be valid unless:

(1) it is duly authorized in advance of construction by the governing body of the Indian tribe,

(2) specifically authorizes you or the occupant to enter into service agreements for utilities without further tribal consent.

(g) The agreement referred to in paragraph (a) of this section must include or have added a plat or diagram showing in detail the location, size, and extent of the line.

(h) The agreement is to encourage the use of telephone, water, electric power, gas and other utilities and to extend these modern conveniences to sparsely settled Indian areas without undue costs. The plat or diagram placed on a separate sheet should bear the signature of the parties.

(i) When tribal lands are involved, the agreement must be accompanied by a certified copy of the tribal authorization.

(j) A signed copy of the agreement, together with a plat or diagram, or an authenticated copy of the tribal authorization, when required, must be filed within 30 days of the agreement.

(k) Failure to meet this requirement may result in the removal of improvements placed on the land at the expense of the party responsible for the placement of such improvements, and

(l) Cause the responsible party to pay for damages caused by his unauthorized act.

§ 169.23 How do I get permission to construct a railroad across Indian land?

(a) The Act of March 2, 1899 (30 Stat. 990), as amended by the Acts of February 28, 1902 (32 Stat. 50), June 21, 1906 (34 Stat. 330), and June 25, 1910 (36 Stat. 859; 25 U.S.C. 312–318); The Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934); and the Act of March 3, 1909 (35 Stat. 781), as amended by the Act of May 6, 1910 (36 Stat. 349; 25 U.S.C. 320), authorize grants of rights-of-way across tribal, individually owned and Government-owned land, except in the State of Oklahoma. These grants of rights-of-way may be for railroads, station buildings, depots, machine shops, side tracks, turnouts, and water stations; for reservoirs, material or ballast pits needed to the construction, repair, and maintenance of railroads; and for the planting and growing of trees to protect railroad lines.

(1) Rights-of-way granted under the above acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169.

(2) Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323–328), shall also be subject to the provisions of this section.

(b) Rights-of-way for railroads shall not exceed 50 feet in width on each side of the centerline of the road, except where there are heavy cuts and fills, then they shall not exceed 100 feet in width on each side of the road.

(1) The right-of-way may include grounds adjacent to the line for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed 200 feet in width by a length of 3,000 feet, with no more than one station to be located within any one continuous length of 10 miles of road.

(c) Short spurs and branch lines may be shown on the map of the main line, separately described by termini and length.

(1) Longer spurs and branch lines shall be shown on separate maps.

(2) Grounds desired for station purposes may be indicated on the map of definite location but separate plats must be filed for such grounds.

(3) The maps shall show any other line crossed, or with which connection is made. The station number shall be shown on the survey thereof at the point of intersection.

(4) All intersecting roads must be represented in ink of a different color from that used for the line for which application is made.

(d) Plats of railroad station grounds shall:

(1) be drawn on a scale of 400 feet to an inch;

(2) must be filed separately from the line of route;

(3) shall show enough of the line of route to indicate the position of the tract with reference to the station grounds.

(4) Each station ground tract must be located with respect to the public survey as provided in § 169.8.

(5) All buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) You must show how the public interest will be promoted by the proposed road if it is parallel to and within 10 miles of, a railroad already built or in course of construction.

(1) Where the Interstate Commerce Commission has made findings, a certified copy of such findings must be filed with the application.

(f) You must certify that the road is to be operated as a common carrier of passengers and freight.

(g) You must execute and file, in duplicate, a stipulation obligating the company to:

(1) use all precautions possible to prevent forest fires;

(2) suppress such fires when they occur;

(3) construct and maintain passenger and freight stations for each Government townsite;

(4) permit the crossing of the right-of-way by canals, ditches, and other projects, in a manner satisfactory to the Government officials in charge.

(h) A railroad company may apply for sufficient land for ballast or material pits, reservoirs, or tree planting to aid in the construction or maintenance of the road.

(1) The authority to use any land shall terminate upon abandonment or failure to use the land for such purposes for a continuous period of 2 years.

§ 169.24 Are railroads in Oklahoma subject to only two Acts?

(a) Yes, the Act of February 28, 1902 (32 Stat. 43), and the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323–328). The February 28 Act authorizes right-of-way grants over tribal and individually owned land in Oklahoma. Rights-of-way under both Acts are subject to pertinent provisions of this part except when otherwise determined by the Secretary under the Act of February 5, 1948.

(b) One reproducible copy of the map of definite location showing the line of route and all lands included within the right-of-way must be filed with the Secretary. When tribal lands are involved, a copy of the map must also be filed with the tribal council.

(c) Before any railroad may be constructed or any lands taken or condemned for any of the purposes set forth in section 13 of the Act of February 28, 1902 (32 Stat. 47), full damages must be paid to the Indian owners.

(d) After the maps have been filed, the matter of damages shall be negotiated by the applicant directly with the Indian owners.

(1) If an amicable settlement cannot be reached, the amount to be paid as compensation and damages shall be fixed and determined as provided in the statute.

(2) If court proceedings are instituted, the facts shall be reported immediately as provided in § 169.21.

§ 169.25 What acts authorize oil and gas pipelines?

(a) The Act of March 11, 1904 (33 Stat. 65), as amended by the Act of March 2, 1917 (39 Stat. 973; 25 U.S.C. 321), the Act of March 11, 1904, as amended, authorizes rights-of-way grants for oil and gas pipelines across tribal, individually owned, and Government-owned land.

(1) Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323–328), shall also be subject to the provisions of this section.

(b) Rights-of-way grants under both Acts are subject to the pertinent provisions of this part.

(c) Rights-of-way granted under the Act of March 11, 1904, as amended, for oil and gas pipelines, pumping stations or tank sites cannot extend beyond a term of 20 years. They may be extended for another period, not to exceed 20 years, following the procedures set out in § 169.19 of this part.

§ 169.26 What must I do to lay a pipeline after my grant for right-of-way is approved?

(a) You must bury all oil or gas pipelines, including connecting lines, a sufficient depth below the surface of the land so that the pipeline does not interfere with cultivation.

(b) Your construction must comply with the provisions of the applicable Federal and State laws whenever laying a line under a road or highway.

(c) You must keep at least one-half the width of the road open to travel during the period of construction. When you have completed the construction, the road or highway must be restored to its original condition and all excavations must be refilled.

(d) If the line crosses a ravine, canyon, or waterway, you must lay the line below the bed or on a superstructure which will not interfere with the use of the surface.

(e) You must show the size of the proposed pipeline in your application, on the maps, in the engineer's affidavit, and in your certificate. The application and maps must specify whether the pipe is welded, screw-joint, dresser, or other type of coupling.

(f) You must first get written permission from us if you would like to lay additional line(s) of pipe in the same trench, or to replace the original line with larger or smaller pipe. You must pay all damages as determined by us that are incurred by the owners in advance for these additions.

(g) You may apply for additional land for pumping stations or tank sites. The maps must show clearly the location of all structures and the location of all lines connecting with the main line.

(h) If we grant approval for additional lands for pumping stations or tank sites, you must file and execute a stipulation agreeing as follows:

(1) To level all dikes, fire-guards, and excavations when you abandon the right-of-way;

(2) To remove all concrete masonry foundations, bases, and structural works when you abandon the right-of-way;

(3) To restore the land as nearly as possible to its original condition when you abandon the right-of-way;

(4) That a grant for a pumping station or tank site purposes must be subservient to the owner's right to remove or authorize the removal of oil, gas, or other mineral deposits; and

(5) That you will remove the structures for pumping the station or tank site or relocate them if necessary to avoid interference with the exploration for or recovery of oil, gas, or other minerals.

(i) You may be allowed to construct purely lateral lines connecting with oil or gas wells on restricted lands after you have filed a copy of the written consent of the Indian owners and a blueprint copy of a map showing the location.

(1) Lateral lines may be of any diameter or length.

(2) Lateral lines must be limited to those used solely for the transportation of oil or gas from a single tract of tribal or individually owned land to another lateral or to a branch of the main line.

(j) Your books and records must be open to inspection at all reasonable times, in order to allow us to obtain information pertaining in any way to oil or gas produced from tribal or individually owned lands or other lands under the jurisdiction of the Secretary.

§ 169.27 What Acts authorize right-of-way grants for telephone and telegraph lines; radio, television, and other communications facilities?

(a) The Act of February 15, 1901 (31 Stat. 790), as amended by the Act of March 4, 1940 (54 Stat. 41; 43 U.S.C. 959); the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961); and the Act of March 3, 1901 (31 Stat. 1083; 25 U.S.C. 319), authorize right-of-way grants across tribal, individually owned, and Government-owned land. Rights-of-way granted under these Acts are subject to this part. They may be granted for:

(1) Telephone and telegraph lines and offices;

(2) Poles and lines for communication purposes: and

(3) Radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities.

(b) Rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323–328), are also subject to the provisions of this section.

(c) You will not be granted a right-of-way for width in excess of 50 feet on each side of the centerline, unless you fully justify a width in excess of 50 feet on each side of the centerline in your application.

(d) You may apply for additional land for office sites if you are engaged in the general telephone and telegraph business. You must file the location of proposed office sites separately from those showing the line of route, and the sites must be drawn to a scale of 50 feet to an inch. Maps must show enough of the line of route to indicate the position of the tract for the sites.

(e) Your tract must be located with respect to the public survey, and all buildings or other structures must be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(f) Rights-of-way will be limited to 200 feet on each side of the centerline for poles and lines for communication purposes.

(g) Radio, television, and other forms of communication transmitting, relay; and receiving structures and facilities, of such lines and poles will be limited to an area not to exceed 400 feet by 400 feet.

(h) A right-of-way granted under the Act of March 4, 1911, as amended, will be limited to a term not exceeding 50 years from the date of the issuance of such grant.

§ 169.28 How do I apply for rights-of-way for electric power projects?

(a) Grants of right-of-way for electric power projects are made under the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961), and the Act of February 5, 1948 (62 Stat.17; 25 U.S.C. 323–328). The March 4, 1911 Act authorizes right-of-way grants across tribal, individually owned and Government-owned land for electrical poles and lines for the transmission and distribution of electrical power.

(1) Rights-of-way granted under the above Acts are subject to the provisions of this section as well as other pertinent sections of this part, except where we determine otherwise under the Act of February 5, 1948.

(2) All applications will be referred to the Office of the Assistant Secretary of the Interior for Water and Science or any other agency as may be designated for the area involved. This does not include those applications made by power-marketing agencies of the Department of the Interior.

(3) Your application for authority to survey, locate, or begin construction on any project for the generation, the transmission or distribution of electrical power of 66 kv or higher, involving government-owned lands, will be reviewed with consideration of the relationship for the proposed project to the power development program of the United States.

(i) If the proposed project will not conflict with the program of the United States, the Secretary may act on your application.

(ii) A right-of-way granted under the Act of March 4, 1911, as amended, will be limited to a term not to exceed 50 years from the date of the issuance of the grant.

(iii) Rights-of-way for power lines will be limited to those widths which can be justified and cannot exceed a width of 200 feet on each side of the centerline.

(iv) If you need to change the proposed location, construction, or use of the project to eliminate conflicts with Federal power development, you must consent to or comply with the required changes before we take further action on your application.

(v) You must make provisions, or bear the reasonable cost of making provisions for avoiding inductive interference between any project transmission line or other project works that you build, operate, or maintain on the right-of-way authorized under the grant and any

radio installation, telephone line, or other communicating facilities built or operated by any Federal agency.

(vi) You must comply with any or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(b) [Reserved]

§ 169.29 What restrictions apply if I ask for a right-of-way across government-owned lands for a transmission line?

(a) If you apply for a right-of-way for a transmission line having a voltage of 66 kv or more, across Government-owned lands you must comply with § 169.5. You must also execute and file a statement with your application agreeing to accept the right-of-way grant subject to the following conditions:

(1) We reserve the right to acquire such line or facilities at a sum to be determined by your representative, a representative of the Secretary, and a third representative to be selected by the other two for the purpose of determining the value of such property to be acquired.

(2) You must allow the Department of the Interior to use, for the transmission of electrical power, any surplus capacity of the line in excess of the capacity needed by you. You must allow us to increase the capacity of the line at the Department's expense and to use the increased capacity for the transmission of electrical power.

(b) [Reserved]

§ 169.30 If the Department uses my surplus capacity to transmit power, what conditions apply?

Use by the Department of surplus or increased capacity will be subject to the following terms and conditions:

(a) If we want to use surplus capacity thought to exist in a line, we will notify you in writing. You must furnish us a certificate within 30 days, stating whether the line has any surplus capacity for the transmission of electrical power in connection with your operations, and, if so, the extent of the surplus capacity.

(b) If you certify that you have surplus capacity available, or have any increased capacity that we pay for, we may interconnect our transmission facilities with your line in a manner that meets approved standards of practice for interconnecting transmission circuits.

(c) We will pay for interconnecting. We will also provide and maintain adequate switching, relaying, and protective equipment to ensure that the normal and efficient operation of your line will not be impaired.

(d) After any interconnection is completed, you must operate and maintain your line in good condition; and, except in emergencies, must keep in a closed position all connections under your control between your line and the interconnecting facilities that we provide.

(e) You must operate the interconnected power systems (yours and ours) in parallel.

(f) We will transmit electrical power over your line in a way that will not interfere unreasonably with your use and operation of the line in accordance with your normal operating standards. We have the exclusive right to use any increased capacity for the line that we provided.

(g) You don't have to allow us to transmit electrical power over your line to any person receiving services from you on the date that you apply for a grant, unless they are entitled to statutory preference in connection with our distribution and sale of electrical power.

(h) We will pay you the total monthly maintenance and operating costs for the part of your line that we use.

(1) We will pay you a percentage of your total operation and maintenance cost for that part of the line. We will calculate this percentage by dividing the kilowatts of power that we transmit over the line by the total kilowatt capacity of that part of the line.

(2) Total monthly cost may include interest amortization on your net total investment (minus any investment that we make in the part of the line that we use). We will calculate this in accordance with the accounting system prescribed by the Federal Power Commission.

(i) We will use only the part of the line that we paid for.

(j) If you find that you need surplus capacity previously available for our use to transmit of electrical power for your operations, you may modify or revoke the previous certification. You must give us 30 months' advance notice of your intention. You may revoke all or any part of the capacity of the line that we certified as being surplus to your needs.

(k) If, during the existence of the grant, you want reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph in regard to the transmission by the Department of electrical power over your line.

(l) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between you and the Secretary of the Interior or his representative.

§ 169.31 May I apply for land that I need for generating plants?

Yes. You may apply for additional lands for generating plants and related facilities. Indicate which lands you need for this purpose on the maps showing the definite location of the right-of-way. You must also file separate maps.

(a) These additional maps must show enough of the line of route to indicate the position of the tract in relation to your transmission line.

(b) You must show the land you need in relation to the public survey as provided in § 169.8, and plat all buildings or other structures on a scale large enough to show clearly their dimensions and relative positions.

§ 169.32 Who can apply to open public highways across Indian lands?

(a) The appropriate State or local authorities may apply under this part for authority to open public highways across tribal and individually owned lands in accordance with State laws, as authorized by the Act of March 3, 1901 (31 Stat. 1084; 25 U.S.C. 311).

(b) The appropriate State or local authorities in Nebraska or Montana, instead of applying under this part, may upon compliance with the requirements of the Act of March 4, 1915 (38 Stat. 1188), lay out and open public highways in accordance with the respective laws of those States.

(c) Under the provisions of the Act of March 4, 1915, the appropriate authorities of Nebraska and Montana must serve the Secretary with notice of intent to open the proposed road and must submit a map of definite location on tracing linen showing the width of the proposed road for our approval prior to the laying out and opening of the road.

(d) Applications for public highway rights-of-way over and across roadless and wild areas will be considered in accordance with the regulations contained in part 265 of this chapter.

Dated: July 11, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–18243 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 120–96]

Exemption of System of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, proposes to exempt the National DNA Index System (NDIS) from 5 U.S.C. 552a(c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g). The purposes of the exemption are to maintain the confidentiality and security of information compiled for purposes of criminal investigation, or of reports compiled at any stage of the criminal law enforcement process. Therefore, to the extent that these records may be subject to the Privacy Act, they are subject to exemption under subsection (j)(2) and are not available under the Privacy Act.

DATES: All comments must be received by August 19, 1996.

ADDRESSES: All comments should be addressed to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Information Resources Management, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

FOR FURTHER INFORMATION CONTACT:

Patricia E. Neely, Program Analyst (202–616–0178).

SUPPLEMENTARY INFORMATION: In the Notice Section of today's Federal Register, there is a description of this system of records.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as set forth below.

Dated: July 8, 1996.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; and 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.96 by removing the heading ''National Crime Information Center (NCIC) (Justice/FBI–001)'' and the undesignated paragraph which follows paragraph (k)(4); and by adding paragraphs (n) and (o) as set forth below.

§ 16.96 Exemptions of Federal Bureau of Investigation Systems—Limited Access, as indicated

* * * * *

(n) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g):

(1) National DNA Index System (NDIS) (JUSTICE/FBI–017).

(o) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available the accounting of disclosures from records to the subject of the record would prematurely place the subject on notice of the investigative interest of law enforcement agencies, provide the subject with significant information concerning the nature of the investigation, or permit the subject to take measures to impede the investigation (e.g., destroy or alter evidence, intimidate potential witnesses, or flee the area to avoid investigation and prosecution), and result in a serious impediment to law enforcement.

(2)(i) From subsections (c)(4), (d), (e)(4) (G) and (H), and (g) because these provisions concern an individual's access to records which concern him/her and access to records in this system would compromise ongoing investigations. Such access is directed at allowing the subject of the record to correct inaccuracies in it. The vast majority of records in this system are from the DNA records of local and State NDIS agencies which would be inappropriate and not feasible for the FBI to undertake to correct. Nevertheless, an alternate method to access and/or amend records in this system is available to an individual who is the subject of a record pursuant to procedures and requirements specified in the Notice of Systems of Records compiled by the National Archives and Records Administration and published in the Federal Register under the designation: National DNA Index System (NDIS) (JUSTICE/FBI–017).

(ii) In addition, from paragraph (d)(2) of this section, because to require the FBI to amend information thought to be incorrect, irrelevant, or ultimately, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde investigations attempting to resolve questions of accuracy, etc.

(iii) In addition, from subsection (g) to the extent that the system is exempt from the access and amendment provisions of subsection (d).

(3) From subsection (e)(1) because:

(i) Information in this system is primarily from State and local records and it is for the official use of agencies outside the Federal Government.

(ii) It is not possible in all instances to determine the relevancy or necessity of specific information in the early stages of the criminal investigation process.

(iii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary, and vice versa. It is only after the information is assessed that its relevancy in a specific investigative activity can be established.

(iv) Although the investigative process could leave in doubt the relevancy and necessity of evidence which had been properly obtained, the same information could be relevant to another investigation or investigative activity under the jurisdiction of the FBI or another law enforcement agency.

(4) From subsections (e) (2) and (3) because it is not feasible to comply with these provisions given the nature of this system. Most of the records in this system are necessarily furnished by State and local criminal justice agencies and not by individuals due to the very nature of the records and the system.

(5) From subsection (e)(5) because the vast majority of these records come from State and local criminal justice agencies and because it is administratively impossible for them and the FBI to insure that the records comply with this provision. Submitting agencies are urged and make every effort to insure records are accurate and complete; however, since it is not possible to predict when information in the indexes of the system (whether submitted by

State and local criminal justice agencies or generated by the FBI) will be matched with other information, it is not possible to determine when most of them are relevant or timely.

(6) From subsection (e)(8) because the FBI has no logical manner to determine whenever process has been made public and compliance with this provision would provide an impediment to law enforcement by interfering with ongoing investigations.

[FR Doc. 96–18326 Filed 7–17–96; 8:45 am]
BILLING CODE 4410–02–M

United States Trustees

28 CFR Part 58

RIN 1105–AA32

Qualifications and Standards for Standing Trustees

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is proposing to amend the qualifications required for an individual to be appointed as a standing trustee. The Department of Justice is also proposing to issue standards to govern the standing trustee. Finally, the Department of Justice is correcting certain typographical errors in part 58.

DATES: Written comments must be submitted on or before September 16, 1996.

ADDRESSES: Please submit written comments to the Office of the General Counsel, Executive Office for United States Trustees, 901 E Street NW., Room 740, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Martha L. Davis, General Counsel, or Jeanne M. Crouse, Attorney, (202) 307–1399. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Under the provisions of 28 U.S.C. 586, the United States Trustee is responsible for appointing individuals to serve as standing trustees in cases filed under chapter 12 and chapter 13 of the Bankruptcy Code, 11 U.S.C. 101 *et seq.*, subject to the approval of the Attorney General. Section 586 also directs the United States Trustee to supervise standing trustees and their administration of cases. The Attorney General has general supervision over each United States Trustee and is authorized to prescribe by rule qualifications for appointment of a standing trustee by the United States Trustee. See 28 U.S.C. 586 (c)–(d). Finally, the Attorney General, in consultation with the United States Trustee, is responsible for fixing a percentage fee and the maximum annual compensation for each standing trustee subject to the limitations set forth in the statute, including the actual and necessary expenses of the trustee. By internal order, the Attorney General has delegated to the Director of the Executive Office for United States Trustees (the ''Director'') the authority to fix percentage fees and compensation and the authority to issue rules governing qualifications for appointment and conduct of standing trustees after appointment.

The qualifications promulgated by the Attorney General are currently found in §§ 58.3 and 58.4 of title 28 to the Code of Federal Regulations. The proposed rule amends these qualifications and formally incorporates certain fiduciary standards that govern the conduct of a standing trustee and his or her operation. These standards address the hiring of relatives, dealings with related parties, and employment relationships among standing trustees.

This rule will aid the Director and the United States Trustees in supervising standing trustees in the administration of cases and in evaluating the actual, necessary expenses of standing trustees relative to fixing appropriate percentage fees and compensation. Adherence to the rule should assist the fair and impartial administration of the office of the standing trustee, help maximize the efficiency and purposes of case administration, and work to avoid improprieties, whether actual or perceived, that could diminish the integrity of the administrative process.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Director has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866 section 3(f), Regulatory Planning and Review.

Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

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

List of Subjects in 28 CFR Part 58

Bankruptcy, Trusts, and Trustees.

For the reasons set forth in the preamble, the Department of Justice proposes to amend 28 CFR part 58 as follows:

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACTS OF 1978 AND 1994

1. The authority citation for part 58 is revised to read as follows:

Authority: 28 U.S.C. 509, 510, 586, 5 U.S.C. 301.

2. In § 58.1, paragraph (a) is revised to read as follows:

§ 58.1 Authorization to establish panels of private trustees.

(a) Each U.S. Trustee is authorized to establish a panel of private trustees (the ''panel'') pursuant to 28 U.S.C. 586(a)(1).

* * * * *

3. Section 58.4 is revised to read as follows:

§ 58.4 Qualifications for appointment as standing trustee and fiduciary standards.

(a) As used in this section—

(1) The term *standing trustee* means an individual appointed pursuant to 28 U.S.C. 586(b).

(2) The term *relative* means an individual related by affinity or consanguinity within the third degree as determined by the law of the jurisdiction where the standing trustee is located, an individual in a step or adoptive relationship within such third degree, or an individual whose close association is the equivalent of a spousal relationship.

(3) The term *financial or ownership interest* excludes ownership of stock in a publicly-traded company if the ownership interest is not controlling.

(b) To be eligible for appointment as a standing trustee, an individual must have the qualifications for membership on a private panel of trustees set forth in § 58.3(b) (1)–(4), (6)–(8). An individual need not be an attorney to be eligible for appointment as a standing trustee. A corporation or partnership may be appointed as standing trustee only with the approval of the Director.

(c) The United States Trustee shall not appoint as a standing trustee any individual who, at the time of appointment, is:

(1) A relative of another standing trustee in the region in which the standing trustee is to be appointed;

(2) A relative of a standing trustee in the region in which the standing trustee is to be appointed, who, within the

preceding one-year period, died, resigned, or was removed as a standing trustee from a case;

(3) A relative of a bankruptcy judge or a clerk of the bankruptcy court in the region in which the standing trustee is to be appointed;

(4) An employee of the Department of Justice within the preceding one-year period; or

(5) A relative of a United States Trustee or an Assistant United States Trustee, a relative of an employee in any of the offices of the United States Trustee in the region in which the standing trustee is to be appointed, or a relative of an employee in the Executive Office for United States Trustees.

(d) A standing trustee must, at a minimum, adhere to the following fiduciary standards:

(1) *Employment of relatives.*

(i) A standing trustee shall not employ a relative of the standing trustee.

(ii) A standing trustee shall also not employ a relative of the United States Trustee or of an Assistant United States Trustee in the region in which the trustee has been appointed or a relative of a bankruptcy court judge or of the clerk of the bankruptcy court in the judicial district in which the trustee has been appointed.

(iii)(A) Paragraphs (d)(1) (i) and (ii) of this section shall not apply to a spouse of a standing trustee who was employed by the standing trustee as of August 1, 1995.

(B) For all other relatives employed by a standing trustee as of August 1, 1995, paragraphs (d)(1)((i) and (ii) of this section shall be fully implemented by October 1, 1998, unless specifically provided below:

(*1*) The United States Trustee shall have the discretion to grant a written waiver for a period of time not to exceed 2 years upon a written showing by the standing trustee of extraordinary and compelling circumstances that make the continued employment of a relative necessary for a standing trustee's performance of his or her duties.

(*2*) Additional waivers, not to exceed a period of two years each, may be granted under paragraph (d)(1)(iii)(B)(*1*) of this section provided the standing trustee makes a similar written showing within 90 days prior to the expiration of a present waiver and the United States Trustee determines that the circumstances for waiver are met.

(*3*) No waivers will be granted for a relative of the United States Trustee or of an Assistant United States Trustee.

(2) *Related party transactions.*

(i) A standing trustee shall not direct debtors or creditors to an individual or entity that provides products or services, such as insurance or financial counseling, if a standing trustee is a relative of that individual or if the standing trustee or relative has a financial or ownership interest in the entity.

(ii) A standing trustee shall not contract or allocate expenses with himself or herself, with a relative, or with any entity in which the standing trustee or a relative of the standing trustee has a financial or ownership interest if the costs are to be paid as an expense out of the fiduciary expense fund.

(iii)(A) The United States Trustee may grant a waiver from compliance with paragraph (d)(2)(ii) of this section for up to three years following the appointment of a standing trustee if the newly-appointed standing trustee can demonstrate in wiring that a waiver is necessary and the cost is at or below market.

(B) The United States Trustee may grant a provisional waiver from compliance with the allocation prohibition contained in paragraph (d)(2)(ii) of this section if one of the following conditions is present:

(*1*) A standing trustee has insufficient receipts to earn the maximum annual compensation determined by the Director during any one of the last three fiscal years and provides the United States Trustee with an appraisal or other written evidence that the allocation is appropriate, or

(*2*) A Chapter 13 standing trustee also serves as a trustee in Chapter 12 cases and provides the United States Trustee with an appraisal or other written evidence that the allocation between Chapter 13 and Chapter 12 cases is appropriate.

(C) Except as otherwise provided below, a standing trustee may seek a reasonable extension of time from the United States Trustee to comply with paragraph (d)(2)(ii) of this section. To obtain an extension, a standing trustee must demonstrate by an appraisal or other written evidence, satisfactory to the United States Trustee, that the expense is at or below market rate. In no event shall an extension be granted for the use and occupation of real estate beyond October 1, 2005. For personal property and personal service contracts, no extension shall be granted beyond one year from the date on which this paragraph becomes effective.

(3) *Employment of Other Standing Trustees.* A standing trustee shall not employ or contract with another standing trustee to provide personal services for compensation payable from fiduciary expense funds. This section does not prohibit the standing trustee from reimbursing the actual expenses incurred by another standing trustee who provides assistance to the standing trustee provided that the reimbursement has been pre-approved by the United States Trustee.

Dated: July 12, 1996.

Joseph Patchan,

Director.

[FR Doc. 96–18327 Filed 7–17–96; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–5539–5]

National Ambient Air Quality Standards for Ozone and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: On June 12, 1996 (61 FR 29719), the EPA published an Advance Notice of Proposed Rulemaking (ANPR) for the review of the national ambient air quality standards (NAAQS) for ozone and particulate matter (PM). The ANPR discussed the ongoing reviews of the ozone and PM standards and the integrated implementation approach that EPA has initiated for possible new or revised standards. That ANPR also presented key issues associated with each review and the integrated implementation approach and included the schedule for the completion of the review of the ozone and PM NAAQS.

DATES: Notice is hereby given that a public meeting on the ANPR for the ozone and PM NAAQS will be held on Thursday, July 25, 1996, from 10:00 a.m. to 9:00 p.m. EST. A second public meeting on the ANPR will be held on Monday, August 5, 1996, from 10:00 to 9:00 p.m. CST.

ADDRESSES: The public meeting to be held on July 25, 1996, will be held at the Wyndham Franklin Plaza Hotel, 2 Franklin Plaza, Philadelphia, Pennsylvania (1–800–822–4200). The public meeting to be held on August 5, 1996, will be held at the Holiday Inn Downtown Convention Center, Convention Plaza, 811 N. 9th Street, St. Louis, Missouri (1–800–289–8338).

FOR FURTHER INFORMATION CONTACT: JoAnn Allman (929) 541–1815.

SUPPLEMENTARY INFORMATION: The agenda for both messages will be divided into three segments: (1) A morning presentation, a panel, and an

opportunity for public comment on issues related to human health effects and environmental effects of ground level ozone and PM; (2) an afternoon presentation, a panel, and an opportunity for public comment on issues related to the implementation of ozone and PM NAAQS; and (3) a late afternoon and evening opportunity for public comment on any other issues related to ozone and PM standard setting.

Seating will be available on a first-come, first-served basis. The public is invited to make short presentations at both meetings. In order to provide the most opportunity for possible comment, the Agency requests that anyone wishing to provide public comment at the meeting register in advance by sending a fax to the meeting facilitator, The Keystone Center. When sending the advance registration fax, please include your name, title, organizational affiliation, address, telephone number, fax number, and an indication of whether you plan to provide comments on: (1) Health and environmental effects of ozone and PM, (2) implementation issues, and/or (3) other issues (if so, please briefly indicate the issue you plan to comment upon). The fax should be sent to Caroline Brendel, The Keystone Center, 970–262–0152.

FOR FURTHER INFORMATION CONTACT: JoAnn Allman at (919) 541–1815, or by mail at U.S. EPA, MD–15, Research Triangle Park, NC 27711. A copy of the ANPR can be downloaded from the Clean Air Act Amendments Bulletin Board, Recently-Signed Rules Section, located on the Office of Air Quality Planning and Standards Technology Transfer Network (OAQPS TTN). A copy of the draft meeting agenda can be downloaded from the Ozone/Particulate Matter/Regional Haze FACA Bulletin Board also located on the OAQPS TTN. Copies of both documents can also be obtained by contacting JoAnn Allman.

Dated: July 11, 1996.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 96–18383 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[TN–151–7017b; TN–153–7018b; TN–161–9621b; TN–162–9622b; TN–164–9626b; TN–168–9628b; TN–169–9629b; FRL–5533–4]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee SIP Regarding Construction Permits and Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revisions submitted by the State of Tennessee for the purposes of incorporating visibility protection requirements into the Construction Permits portion of the rule (1200–3–9–.01) and to respond to deficiencies of chapter 1200–3–18 as described in 60 FR 10504 published on February 27, 1995, which acted on the Tennessee VOC Reasonably Available Control Technology (RACT) submittal to meet the 1990 VOC RACT ''Catch Up'' requirements. The EPA is also approving two new rules into Tennessee's VOC chapter which regulate VOC emissions from offset lithographic printing operations and wood furniture finishing and cleaning operations. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 19, 1996.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN151–01–7017, TN153–01–7018, TN161–01–9621, TN162–01–9622, TN164–01–9626, TN168–01–9628, and TN169–01–9629. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365. William Denman, 404/347–3555 extension 4208.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

FOR FURTHER INFORMATION CONTACT: William Denman, 404/347–3555 extension 4208.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: June 24, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–18198 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 071–0005b; FRL–5464–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, El Dorado County Air Pollution Control District, Placer County Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from adhesives, architectural coatings, and wood products coatings.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with

the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by August 19, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Placerville, CA 95667.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION: This document concerns rules from the El Dorado County Air Pollution Control District (EDCAPCD), the Placer County Air Pollution Control District (PCAPCD), and the Ventura County Air Pollution Control District (VCAPCD). The following table lists the names of the rules, the dates of district adoption, and the dates that the California Air Resources Board (CARB) submitted the rules to EPA.

Rule	Adoption	Submittal
EDCAPCD 215—Architectural Coatings	9/27/94	11/30/94
EDCAPCD 236—Adhesives	7/25/95	10/13/95
EDCAPCD 237—Wood Products Coatings	6/27/95	10/13/95
PCAPCD 218—Architectural Coatings	2/9/95	5/24/95
PCAPCD 235—Adhesives	6/8/95	10/13/95
VCAPCD 74.20—Adhesives and Sealants	6/8/93	11/18/93

For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 18, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–18204 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[OR–54–7269b; FRL–5515–4]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Oregon to support Oregon's ozone Nonattainment Area control strategy(ies). The SIP revision was submitted by the State to satisfy Federal Clean Air Act requirements. In the Final Rules Section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by August 19, 1996.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Angela McFadden, Office of Air Quality (OAQ–107), EPA, Region 10, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6908.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: May 22, 1996.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 96–18202 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5535–6]

RIN 2060–AG19

Protection of Stratospheric Ozone: Reconsideration of the Ban on Fire Extinguishers Containing HCFCs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through this action EPA is proposing to amend the Class II Nonessential Products Ban promulgated under Section 610 of the Clean Air Act Amendments to provide an exemption for portable fire extinguishing equipment that contains hydrochlorofluorocarbons (HCFCs) for non-residential applications. EPA is proposing this exemption based on new information. EPA believes an exemption is necessary to ensure that an effective substitute to halon, a class I ozone depleter, is readily available.

EPA believes that this proposed amendment, while decreasing the regulatory burden on HCFC extinguishant manufacturers and distributors, will not compromise the goals of protecting public health and the environment.

DATES: Comments on this proposal must be received by August 19, 1996 at the address below. A public hearing, if requested, will be held in Washington, DC. If such a hearing is requested, it will be held on August 2, 1996, at 9 a.m., and the comment period would then be extended to September 3, 1996. Anyone who wishes to request a hearing should call Cindy Newberg at 202/233–9729 by July 25, 1996. Interested persons may contact the Stratospheric Protection Hotline at 1–800–296–1996 to learn if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

The proposed effective date for the changes to the regulatory language would be 30 days after publication of the final rulemaking in the Federal Register.

ADDRESSES: Comments on this proposal must be submitted to the Air Docket Office, Public Docket No. A–93–20 VIII, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Additional comments and materials supporting this rulemaking are contained in Public Docket No. A–93–20. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

If a public hearing is convened, it will be held at 501 3rd Street, NW., first floor conference room, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202)233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Regulated Entities

Entities potentially regulated by this action are those that wish to manufacturer, sell, or distribute in interstate commerce portable fire extinguishers that contain hydrochlorofluorocarbons (HCFCs) for non-residential applications. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of fire extinguishants. Manufacturers and distributors of portable fire extinguishers. Fire protection specialists.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in Section 610(d) of the Clean Air Amendments of 1990; discussed in regulations published on December 30, 1993 (58 *FR* 69638); and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

In 1993, EPA promulgated a rulemaking to establish regulations that implemented the statutory ban on nonessential products containing or manufactured with class II ozone-depleting substances under Section 610(d) of the Clean Air Act Amendments of 1990 (58 *FR* 69638). This final rule was developed by EPA to clarify definitions and to provide exemptions, as authorized under Section 610(d). EPA was not required to promulgate regulations since the ban was self-executing. The substances affected by the Class II Ban are plastic foam products, aerosol products and pressurized dispensers.

Section 610(d)(1) states that after January 1, 1994, ''it is unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce (A) any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance.'' Section 610(d)(2) authorizes EPA to grant certain exceptions and section 610(d)(3) creates exclusions from the class II ban in certain circumstances.

Section 610(d)(2) authorizes the Administrator to grant exceptions from the class II ban for aerosols and other pressurized dispensers where ''the use of the aerosol product or pressurized dispenser is determined by the Administrator to be essential as a result of flammability or worker safety concerns,'' and where ''the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for such class II substance.'' Section 610(d)(3) states that the ban of class II substances in plastic foam products shall not apply to ''foam insulation products'' or ''an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I or class II substance) is practicable for effectively meeting such standards.'' For additional information concerning this rulemaking and for a complete list of exempted and excluded products, the reader should review the final regulations published in the Federal Register December 30, 1993 (58 *FR* 69638). These rules are also codified at 40 CFR Part 82 Subpart C.

III. Portable Fire Extinguishers

In the rulemaking, the Agency exempted from the Class II Ban the use of HCFCs in portable fire extinguishers

until such time as ''suitable'' substitutes for HCFCs in this application became ''commercially available'' (58 *FR* 69646). The inclusion of fire extinguishers in the class II ban was intended to be consistent with the class I ban, whereby CFCs used in fire extinguishers were banned since suitable substitutes were commercially available (January 15, 1993, 58 *FR* 4768). EPA distinguished between total flooding fire suppression systems, which were not identified as pressurized dispensers, and portable fire extinguishers, which the Agency interpreted as falling into the category of pressurized dispensers (58 *FR* 69647).

Since the Class II Ban became effective, EPA has learned new information as to significant complications in determining broad suitability of substitute fire extinguishants. EPA has received two petitions requesting that the Agency reconsider the Class II Ban as it relates to portable fire extinguishers. The first request for reconsideration was submitted by Paul Huston and Associates on March 10, 1995. The second petition was submitted by Alcalde & Fay on behalf of Halotron, Incorporated, and DuPont on June 22, 1995. Through these petitions, subsequent verbal and written communications, and additional research by the Agency, EPA has learned new and compelling information concerning the availability of fire extinguishants suitable to replace halon and CFCs in streaming applications.

Portable fire extinguishers for commercial applications present a unique dilemma, for a variety of reasons. First, their specific intended use is to protect human life and property. The fire extinguishant is typically used only in response to a threat to life or property. Second, one type of extinguishant is not universally suitable for all situations, in that different types of fires, different environments in which fires are potentially to be fought, and different types of property being protected, each dictate a particular set of characteristics, found in varying degrees in various extinguishants. Third, the fire protection industry's codes, standards and regulations are extremely complex, such that states and localities adopt standards parallel to a national standard at vastly divergent times. Furthermore, some states and localities have adopted different versions of fire codes. Additionally, typical insurance industry requirements mandate conformance with local codes before proper insurance coverage can be obtained. Given these constraints, for purposes of section 610(d), determining the suitability and thus, commercial availability, of a substitute for use generally in portable fire extinguishers for non-residential applications becomes extremely elusive.

EPA states that ''suitability of the agent implies that an agent is commercially available, that a fire will be extinguished quickly, and will result in minimum degradation of the products being protected from the fire'' (58 *FR* 69648). EPA has interpreted commercial availability to mean that the product is widely available for the desired application and that its use is not precluded in certain situations (i.e., because some local fire codes have not yet approved its use). In addition to commercial availability, the portable fire extinguisher must adequately extinguish the fire without causing undue harm to persons and not destroy the property it is intended to protect. For many typical commercial scenarios where halon was used in the past, only clean agents such as HCFCs can achieve these fire protection goals.

Suitability is interpreted to apply broadly throughout the nation, such that no entity has precluded that product's use through regulation or lack of regulatory modification. Without consistent standards regarding the use of a substitute in place across the country, EPA currently believes it would be nearly impossible to responsibly determine that a substitute used in a non-residential portable fire extinguisher was ''suitable'' and thus, that such HCFC fire extinguishers should be subject to the ban.

A logical question one may ask is, ''How can EPA adequately determine acceptability of potential fire extinguishant substitutes pursuant to Section 612 of the Clean Air Act and also believe itself unable to determine suitable fire extinguishant substitutes pursuant to Section 610(d)?'' The answer lies in the degree of burden entailed in EPA's determination. Under Section 610(d), the burden is on EPA to actually decide that one kind of extinguishant cannot be exempted from the ban by determining that the substitute will be just as effective and available as the replaced extinguishant. Under Section 612, on the other hand, the burden on EPA is merely to deem substitutes acceptable if they do not present other health or environmental hazards. The latter task does not extend to banning those substances that the substitute claims to replace, nor does it include an examination of efficacy. The rulemakings implementing Section 612 and establishing the Significant New Alternatives Policy (SNAP) Program indicate that EPA does not review a substitute's ability to effectively perform in the same manner as the ozone depleter. EPA believes that banning a substance (as required under § 610(d)) used in the protection of life and property, based on confusing information regarding the suitability of the substitute, would be irresponsible.

When EPA promulgated the initial rulemaking that exempted products from the class II ban in 1993, potential exemptions for other types of pressurized dispensers that were considered and ultimately denied usually were denied because there was a suitable substitute already available and already in use for either the same or for a similar application. Several of the substitutes were not-in-kind substitutes and others required significant changes prior to replacing the ozone-depleting substance with the substitute. Significantly, most of the identified substitutes for these pressurized dispensers were proven alternatives for the ozone depleter already used by others for a similar endeavor. However, for portable fire extinguishers used in non-residential applications, the potential non-ozone-depleting replacements that are also clean agents, are not yet in use.

Many of those seeking to replace halon continue to require clean agents. EPA states that ''non-halocarbon alternatives to Halon 1211 are already in widespread use in selected commercial applications because of their effectiveness, and due to the current regulatory climate, their use has been increasingly adopted wherever possible'' (58 *FR* 69647). EPA believes where non-gaseous agents can be used, appropriate consideration for these substitutes already occurs. However, the need for the continued availability of gaseous agents commonly referred to as clean agents was the basis for the limited exemption for HCFCs contained in the initial rulemaking. EPA intended for this exemption to expire after additional clean agents became available. However, as stated above, SNAP does not review the efficacy of the acceptable substitutes; therefore, EPA cannot rely on SNAP review to determine the efficacy of potential clean agents for purposes of Section 610(d). Furthermore, since the substitutes are not yet in use, EPA cannot rely on the findings of other users.

Given that suitability and commercial availability cannot be determined adequately for purposes of banning this product at this time, today's action proposes replacing the limited exemption that already exists with a

total exemption for portable fire extinguishers for non-residential applications from the Class II Ban at this time. This change in the regulatory language would simply serve to clarify the actual situation for the regulated community and provide a consistent determination regarding suitability based on current information. Furthermore, it would relieve the regulated community from the burdensome task of monitoring federal, state, and local activities concerning the review of other substitutes and attempting to assess at what point the standard of commercial availability has been achieved.

If at some future date, compelling information is brought to the Agency's attention indicating that suitable substitutes are widely available for fire extinguishing applications, EPA may ultimately conclude that suitable substitutes are commercially available and undertake appropriate notice and comment procedures to remove this exemption. EPA requests comment on this proposal.

IV. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this proposed action to amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this NPRM is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this NPRM proposes to provide relieve by permitting the use of portable fire extinguishers that contain HCFCs; and therefore, would increase the flexibility in choosing a particular fire extinguishant thus reducing the net effect of the burden of part 82 subpart C of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no informational collection requirements are proposed by today's action, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no Information Collection Request document has been prepared.

D. Regulatory Flexibility Act

EPA has determined that is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. Any impact this proposed rule will have on small entities will be to provide relief from regulatory burdens. EPA has determined that this proposed rule will not have a significant adverse economic impact on a substantial number of small businesses.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Government procurement, Imports, Labeling, Reporting and recordkeeping requirements.

Dated: July 3, 1996.

Carol M. Browner,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

§ 82.62 [Amended]

2. Section 82.62 is amended by removing paragraphs (j) and (k).

§ 82.68 [Amended]

3. Section 82.68 is amended by removing and reserving paragraphs (f) and (g).

4. Section 82.70 is amended by revising paragraph (a)(2)(vii) to read as follows:

§ 82.70 Nonessential class II products and exceptions.

* * * * *

(a) * * *

(2) * * *

(vii) Portable fire extinguishing equipment used for non-residential applications; and

* * * * *

[FR Doc. 96–17904 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300429; FRL–5376–4]

RIN 2070–AC18

Vinyl Alcohol-Vinyl Acetate Copolymer, Benzaldehyde-o-Sodium Sulfonate Condensate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate when used as an inert ingredient (water soluble resin) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and when applied to animals. This proposed regulation was requested by Mitsui Plastics, Inc.

DATES: Written comments, identified by the docket number [OPP–300429], must be received on or before August 19, 1996.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–300429]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703) 308–8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Mitsui Plastics, Inc., 11 Martine Ave, White Plains, NY 10606, submitted pesticide petition (PP) 6E4718 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346 a(e)), propose to amend 40 CFR 180.1001(c) and (e) by establishing an exemption from the requirement of a tolerance for residues of vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate when used as an inert ingredient (water soluble resin) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as ''polymers,'' the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers:

1. Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen, sodium and sulfur.

3. Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate is not designed, nor is it reasonably anticipated to substantially degrade, decompose or depolymerize.

5. Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000 daltons.

7. The minimum number-average molecular weight of vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate is 20,000 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate has a minimum number average molecular weight of 20,000 and contains less than 2 percent oligomeric material below molecular weight 500 and less than 5 percent oligomeric material below 1,000 molecular weight.

9. Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate does contain aliphatic hydroxy groups, aliphatic ester groups, diacetal groups and sodium sulfonate groups as reactive functional groups. However, these reactive groups are not intended or reasonably anticipated to undergo further reactions.

Based on the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number, [OPP–300429].

A record has been established for this rulemaking under docket number [OPP–300429] (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will be placed in the paper copies of the official rulemaking record which also will include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in the ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirement of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, the table in paragraphs (c) and (e), is amended by adding alphabetically the inert ingredient ''Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000,'' to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Vinyl alcohol-vinyl acetate copolymer,benzaldehyde-*o*-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000.		Water soluble resin
* *	* * *	* *

* * * * * (e) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Vinyl alcohol-vinyl acetate copolymer,benzaldehyde-*o*-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000.		Water soluble resin
* *	* * *	* *

[FR Doc. 96–17925 Filed 7–17–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5537–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Bonneville Power Administration (BPA)/Ross Complex from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Bonneville Power Administration (BPA)/Ross Complex site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law Number 99–400 (CERCLA).

EPA has determined, and Washington State's Department of Ecology (Ecology) has concurred, that the BPA/Ross Complex site poses no significant threat to public health or the environment and, therefore, further remedial measures are not appropriate.

DATES: Comments concerning this site may be submitted on or before August 19, 1996.

ADDRESSES: Comments may be mailed to Nancy Harney, U.S. EPA Region 10, Mail Stop: ECL–111, 1200 6th Avenue, Seattle, Washington 98101.

Comprehensive information on this site is available through the Region 10 Deletion Docket, which is located at EPA's Region 10 office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Appointments for copies of the background information from the Regional public docket should be directed to the EPA Region 10 docket office at the following address: Lynn Williams, United States Environmental Protection Agency, Region 10, Environmental Cleanup Office, ECL–110, Superfund Records Center, 1200 6th Avenue, Seattle, Washington 98101.

The Deletion Docket is also available for viewing at the following locations:

BPA/Ross Complex, 5411 NE Highway 99, Plant Services Building, 2nd Floor, Vancouver, Washington

Vancouver Regional Library, 1007 East Mill Plain Boulevard, Vancouver, Washington

FOR FURTHER INFORMATION CONTACT: Nancy Harney, U.S. EPA Region 10, Mail Stop: ECL–111, 1200 6th Avenue, Seattle, Washington 98101, (206) 553–6635.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The United States Environmental Protection Agency (EPA) Region 10 announces its intent to delete the BPA/Ross Complex site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Contingency Plan (''NCP''), 40 CFR Part 300, and requests comments on this proposed deletion. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment and maintains the NPL as the list of these sites. EPA may delete a site from the NPL if it determines that no further response is required to protect human health and the environment. As described in Section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site are later found to warrant such actions.

EPA will accept comments on the proposal to delete this site for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the BPA/Ross Complex site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with Section 300.425(e) of the NCP, 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate response under CERCLA has been implemented, and no further action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

It is EPA's policy that even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site *above* levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this site, the selected remedies are protective of human health and the environment. Consistent with Section XIX of the BPA/Ross Complex Federal Facility Agreement (FFA), BPA will conduct a five-year review of these final remedies. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1)

All appropriate response under CERCLA has been implemented and no further action by BPA is appropriate; (2) Ecology has concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers and has been distributed to appropriate federal, state and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete, and (4) all relevant documents have been made available in the local site information repositories.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this Notice, 40 CFR 300.425 (e)(3) states that deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. The Agency will prepare a Responsiveness Summary if significant public comments are offered.

A deletion occurs when the Regional Administrator places a final notice in the Federal Register. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this site from the NPL:

The BPA/Ross Complex consists of a 235-acre tract in Clark County on the eastern side of U.S. Highway 99. The site is an active facility that has been owned and operated by the BPA since 1939 to coordinate the distribution of hydroelectric power generated by the Federal Columbia River Power System to regions throughout the Pacific Northwest. Since its construction, the site has provided research and testing facilities, maintenance and construction operations, and waste storage and handling operations for BPA.

In November 1989 the EPA placed the BPA/Ross Complex on the NPL, making it a Superfund site subject to the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The listing was based on the presence of volatile organic compounds (VOCs), Trichloroethane (TCA), Dichloroethene (DCE) in groundwater, PCBs in surface soils, and the Ross Complex's proximity to the City of Vancouver's drinking water supply. As a result of the listing, and pursuant to a Federal Facility Agreement (FFA) signed by BPA, EPA and the Washington Department of Ecology on May 1, 1990, BPA conducted a Remedial Investigation/Feasibility Study (RI/FS) to determine the nature and extent of contamination at the Ross Complex and to evaluate alternatives for cleanup of contaminated areas.

To facilitate the Superfund investigation process, the site was divided into two separate Operable Units (OUs), (OUA and OUB). The OUA investigation focused on surface soil contamination. Of the 21 waste units evaluated as part of the RI, the OUA Record of Decision (ROD) signed on May 6, 1993, required remedial action for only 3 areas. A total of 2,544 tons of contaminated soil was excavated and disposed at an approved off-site landfill in Arlington, Oregon. PCB-contaminated concrete footings and debris were also removed and disposed offsite. Soils in the Wood Pole Storage Area East were treated by enhanced bioremediation and then covered by a cap of clean gravel.

The OUB RI focused on characterization of subsurface soils in two waste units and also included characterization of the shallow perched water table, the deep groundwater aquifer beneath the Ross Complex, and surface water and sediments in Cold Creek and Burnt Bridge Creek. Perched water tables and the deep aquifer beneath the Ross Complex were tested for a wide range of potential contaminants including VOC's, pesticides, herbicides, metals, base neutral acids, PCB's, phenols, phthalates and polycyclic aromatic hydrocarbons (PAH's). Based on the findings of the RI, the OUB ROD signed on September 29, 1993, required installation of a multi-layered permanent cap at the Fog Chamber Dump Trench Area 1. Remedial action was not required for groundwater, surface water or sediments.

EPA believes that the remedial actions taken at this site are protective of human health and the environment and no further remedial action under CERCLA is warranted. However, the OUB ROD requires institutional controls for subsurface soils as well as groundwater monitoring at several on-site wells to verify that groundwater conditions remain adequately protective.

As previously stated, one of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''all appropriate response under CERCLA has been implemented, and no further action by responsible parties is appropriate.'' EPA, with concurrence of Ecology, believes that this criterion for deletion has been met. Therefore, EPA is proposing deletion of the BPA/Ross Complex site from the NPL. Documents supporting this action are available at the designated information repositories.

Dated: June 20, 1996.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 96–17905 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 070996A]

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings to allow for input on Amendment 6 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). The hearings will be tape recorded with the tapes filed as the official transcript of the hearings.

DATES: Written comments will be accepted through August 1, 1996. The hearings are scheduled as follows:

1. July 29, 1996, 7 p.m., Warwick, RI.
2. July 29, 1996, 7 p.m., Virginia Beach, VA.
3. July 30, 1996, 7:30 p.m., Long Island, Riverhead, NY.
4. July 31, 1996, 7 p.m., Cape May Courthouse, NJ.

ADDRESSES: Send comments to: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904. The hearings will be held at the following locations:

1. Warwick—Holiday Inn at the Crossings, 801 Greenwich Avenue, Warwick, RI
2. Virginia Beach—Days Inn, 5708 Northampton Boulevard, Virginia Beach, VA
3. Long Island, Riverhead—Ramada East End, Exit 72 L.I.E. and Route 25, Long Island, Riverhead, NY

4. Cape May Courthouse—Cape May Extension Office, Dennisville Road, Cape May Courthouse, NJ

FOR FURTHER INFORMATION CONTACT: David R. Keifer, (302) 674–2331.

SUPPLEMENTARY INFORMATION: Amendments 2 through 5 to the FMP, as adopted by the Council and approved by NMFS, established procedures for setting annual catch specifications for Atlantic mackerel, *Loligo* squid, *Illex* squid, and butterfish, required that commercial vessels and party and charter boats obtain permits, established overfishing definitions for the four species, established policies related to the foreign fishery and joint ventures, eliminated foreign fisheries for butterfish and the squids, implemented moratoria on entry of additional vessels into the squid and butterfish fisheries, allowed for seasonal quotas in the *Loligo* fishery, implemented a minimum mesh net in the *Loligo* fishery, and developed a dealer and vessel reporting system.

The management measures for Amendment 6 adopted by the Council for hearings are:

1. Revised overfishing definitions for *Illex* and *Loligo* squid and Atlantic butterfish.

2. Provision for NMFS to close the U.S. directed fishery for *Loligo*, *Illex*, or butterfish when U.S. fishermen have harvested 95 percent of the allowable domestic annual harvest (DAH) if such closure is necessary to prevent DAH from being exceeded.

3. The Director, Northeast Region, NMFS, may impose season closures in the *Illex* fishery to improve yield per recruit from the fishery, based upon the recommendation of the Council. This may include delaying the opening of the directed *Illex* fishery if substantial increases in yield will result from such closures.

The public hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to David R. Keifer (see **ADDRESSES**) at least 5 days prior to the hearing dates.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18190 Filed 7–17–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 139
Thursday, July 18, 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 AGRICULTURE

Submission for OMB Review; Comment Request

July 12, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, PACC–IRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- Food and Consumer Service

Title: Nutrition Education and Training (NET) Inventory.

Summary: The Nutrition Education and Training Program (NET) is one of several child nutrition programs operated by the Food and Consumer Service (FCS) of the U.S. Department of Agriculture. The research effort described represents the first comprehensive attempt to inventory the range of programs and collaborative efforts supported through NET grant funds.

Need and Use of the Information: The study is to determine to what extent the current needs for nutrition education and training are being met.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 60.

Frequency of Responses: Reporting: One-time only.

Total Burden Hours: 90.

- Rural Housing

Title: 7 CFR 1980–I, ''Community Programs Guaranteed Loans''.

Summary: This regulation promulgates the policies and procedures for Community Program loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing or liquidating such loans.

Need and Use of the Information: This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes.

Description of Respondents: Not-for-profit institutions: State, Local or Tribal Government.

Number of Respondents: 175.

Frequency of Responses: Reporting: Quarterly, Annually.

Total Burden Hours: 22,012.

- Agricultural Marketing Service

Title: Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR Part 110)

Summary: The Secretary of Agriculture is required to establish requirements for recordkeeping by all certified applicators of Federal restricted use pesticides. The records are needed to provide written reports on Federal restricted use pesticides to Congress.

Need and Use of the Information: Records are being kept to provide information to be utilized by licensed health care professionals for possible medical treatment. In addition, USDA is requested to submit annual reports to Congress to support the decisionmaking process concerning pesticides with accurate use data.

Description of Respondents: Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,148,864.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,171,712.

- Agricultural Marketing Service

Title: Almonds Grown in California Marketing Order 981.

Summary: Information collected includes referendum ballots, shipments, transfers and inventories of almonds as well as deposition of inedible almonds.

Need and Use of the Information: The information is used to compile statistics for the almond industry, for program compliance, acceptance of the market order and to determine qualifications to serve on the Almond Board.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 7,658.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Semi-mo.

Total Burden Hours: 2,512.

- Agricultural Marketing Service

Title: Vidalia Onions Grown in Georgia, M.S. No. 955.

Summary: Information collected includes referendum ballots, shipments of onions and assessments.

Need and Use of the Information: The information is used for program compliance, acceptance of the market order and to determine qualifications to serve on the Vidalia onion board.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 197.

Frequency of Responses: Recordkeeping; Reporting: Biennially; Monthly.

Total Burden Hours: 153.

- Farm Service Agency

Title: Emergency Livestock Feed Assistance and Disaster Reserve Assistance Program, 7 CFR 1439.

Summary: The Federal Improvement and Reform Act of 1996 suspended the Emergency Livestock Feed Assistance Program for Crop years 1996 through 2002; the Conference Report provided for an orderly termination of the program that afforded States and counties that implemented the programs before the evoctment of the 1996 Act an opportunity to continue accepting application for 30 days.

Need and Use of the Information: The data is needed to provide the benefits authorized by the program and to administer the programs.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 22,500.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 33,600.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–18191 Filed 7–17–96; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Government Owned Inventions Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for Licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. International patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: June Blalock, Technology Licensing Coordinator, USDA, ARS, Room 415, Bldg. 005, BARC-West, Beltsville, Maryland 20705; Phone 301–504–5989 or Fax 301–504–5060. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

8–038,768, Maize Chlorotic Dwarf Virus and Resistance Thereto
8–308,894, Gypsy Moth Genotype Assay
8–415,884, Delignification of Lignocellulosic Materials with Peroxymonophosphoric Acid
8–515,502, Aquagel-Based Lightweight Concrete
8–534,810, Method for the development of δ-Lactones and Hydroxy Acids from Unsaturated Fatty Acids and Their Glycerides
8–544,748, Monoclonal Antibodies to Potato, Tomato, and Eggplant Glycoalkaloids and Assays for the Same
8–548,852, Determination of the Source of a Soil Sample
8–550,310, Machine Vision Apparatus and Method for Sorting Objects
8–556,054, Communications System Having a Tree Structure
8–556,182, Volatiles of Japanese Honeysuckle Flowers as Attractants for Adult Lepidopteran Insects
8–569,473, Corn Fiber Oil—It's Preparation and Use
8–576,998, Break-in Resistant Wood Panel Door
8–580,230, Reaction Products of Magnesium Acetate and Hydrogen Peroxide for Imparting Antibacterial Activity to Fibrous Substrates
8–580,663, Biodegradable Laminated Films Fabricated from Pectin and Chitosan
8–586,331, Glutenin Genes and Their Uses
8–591,923, Enhanced Water Resistance of Starch-Based Materials
8–593,999, Cell Line for Propagating Receptor Binding Site-Deleted FMDV
8–595,607, Method for Manufacturing Limonoid Glucosides
8–598,418, System for Automated Calibration of Sensors
8–603,817, Monoclonal Antibodies to Ceftiofur and Assays for the Same
8–606,791, Bioactive Compounds
8–607,504, Retention and Delivery of Nematodes for Insect Control
8–608,450, Grid Bar Scraper for a Lint Cleaner
8–609,334, Restriction Enzyme Screen for Differentiating Porcine Reproductive and Respiratory Syndrome Virus Strains
8–611,701, Closed Loop Pneumatic Transport System
8–620,077, Fungal Gene Encoding Resistance to the Phytotoxin Cercosporin
8–621,858, Malathion Resistant Strain of a Heteropterous Predator
8–624,677, Antigens Useful for the Serodiagnosis of Neosporosis
8–624,870, Vegetable Oil-Based Offset Printing Inks
8–631,497, Fuels as Solvents for the Conduct of Enzymatic Reactions
8–631,498, Production of Biodiesel, Lubricants and Fuel and Lubricant Additives
8–633,334, Phytotoxin Deficient Mutant Strains of the Biocontrol Agent *Trichoderma virens*
8–653, 037, Leader-Proteinase Deleted Foot-and-Mouth Disease Viruses and Their Use as Vaccines
5,444,045, Method of Administering IGF–1, IGF–2, and Analogs Thereof to Birds
5,498,534, Method of Removing Color from Wood Pulp Using Xylanase from *Streptomyces Roseiscleroticus* NRRL B–11019.

June Blalock,

Technology Licensing Coordinator.

[FR Doc. 96–18158 Filed 7–17–96; 8:45 am]

BILLING CODE 3410–03–M

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service (ARS), intends to grant to Colorado State University Research Foundation of Fort Collins, Colorado, a license to U.S. Patent 5,135,759 issued August 4, 1992, ''Method to Preselect the Sex of Offspring,'' for all uses in the field of non-human mammals. This will be the second license granted for this invention in this field. ARS intends to grant no additional licenses. Notice of Availability was published in the Federal Register on July 26, 1989.

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

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC–West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Colorado State University Research Foundation has submitted a complete and sufficient application for a license. The prospective license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 The prospective license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–18157 Filed 7–17–96; 8:45 am]

BILLING CODE 3410–03–M

Food and Consumer Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Council meeting:

Name: National Advisory Council on Maternal, Infant and Fetal Nutrition (Council).

Date and Time: September 10–12, 1996, 9:00 a.m.

Place: Food and Consumer Service, 3101 Park Center Drive, 4th Floor Conference Room, Alexandria, Virginia 22302.

Purpose of Meeting: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

Agenda: The agenda items will include the formulation of recommendations for the Council's 1996 report to the President and Congress and a discussion of general program issues.

Recommendations for the report may address administrative and legislative changes for WIC and CSFP as determined by the Council.

Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below before or after the meeting.

Persons wishing additional information about this meeting should contact Tama Eliff, Supplemental Food Programs Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Telephone: (703) 305–2730.

Dated: July 2, 1996.

William E. Ludwig,

Administrator.

[FR Doc. 96–18254 Filed 7–17–96; 8:45 am]

BILLING CODE 3410–30–U

Natural Resources Conservation Service

Changes in the State Technical Guides in California

AGENCY: Natural Resources Conservation Service (formerly the Soil Conservation Service), USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to Section 343 of Subtitle E of the Federal Agriculture Improvement and Reform Act of 1996 (FAIRA) that requires the Secretary of Agriculture to provide public notice and comment under Section 553 of Title 5, United States Code, with regard to any future revisions to those provisions of the Natural Resources Conservation Service (NRCS) State technical guides that are used to carry out Subtitles A, B, and C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*), the Natural Resources Conservation Service, United States Department of Agriculture, gives notice of revisions to all conservation practices in Section IV of the State technical guides in California. The distribution of these revisions and an updated index of conservation practice standards and specifications will be via California Technical Guide Notice 14 during August 1996.

These revisions to conservation practices in Section IV of State technical guides are subject to these provisions since one or more are used or could be used a part of a conservation management system to comply with the Highly Erodible Land Conservation or Wetland Conservation requirements.

FOR FURTHER INFORMATION CONTACT: Charles W. Bell, State Resource Conservationist, USDA–NRCS, 2121–C Second Street, Suite 102, Davis, CA 95616–5475. FAX (916) 757–8382 or Internet: cbell@ca.nrcs.usda.gov

A copy of the new index and any of the revised items can be obtained from Charles W. Bell. These items will also be available at each of the NRCS field offices in California beginning in September 1996. Comments can be sent at anytime to Charles W. Bell or to the District Conservationist at any NRCS field office in California.

SUPPLEMENTARY INFORMATION: In California, ''State technical guides'' refers to the State Office Technical Guide maintained by the NRCS State Resource Conservationist in Davis, California; to the Area Office Technical Guide maintained at each NRCS Area Office in Red Bluff, Salinas, and Fresno, California; and to the Field Office Technical Guide maintained at each NRCS Field Office in California.

The last revisions to conservation practices in State technical guides in California were issued via California Technical Guide Notice Number 9 on December 14, 1995. The current California ''Index of Conservation Practice Standards and Specifications'' is dated November 1995.

Revisions include word changes, reformatting sections of practice standards to be consistent with new national guidelines, name changes, renumbering, additions, deletions, and redating.

The revised conservation practices and revised Index will be dated July 1996 and include all of the 171 conservation practice standards, 122 conservation practice specifications and their practice requirements sheets, 9 conservation practice material specifications, and 8 conservation practice construction standards.

Revisions include deletion of two practice standards and four practice specifications and their practice requirements sheets, the addition of four new practice standards and 24 new practice specifications and their practice requirements sheets, modifications to the names of 9 practices, renumbering 37 practice standards and 28 practice specifications and their practice requirements sheets, the deletion of material specification 606, and the addition of material specification 606A.

Dated: July 11, 1996.

Henry C. Wyman,

Deputy State Conservationist, Natural Resources Conservation Service.

[FR Doc. 96–18235 Filed 7–17–96; 8:45 am]

BILLING CODE 3410–16–M

Rural Housing Service

Notice of Request for Comments on Information Collection Package

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, this Notice announces the Rural Housing Service's (RHS's) intent to request approval of an Information Collection package in support of the direct Single Family Housing (SFH) programs of the Agency.

DATES: Comments must be received no later than close of business September 16, 1996. Comments received after such date will not be considered; therefore, the commentor should allow sufficient mailing and delivery time. RHS encourages the submission of comments within 30 days.

FOR FURTHER INFORMATION CONTACT: For inquiries on the Information Collection Package, contact Barbara Williams, Information Collection Coordinator, RHS at (202) 720–9734. For program content, contact David J. Villano, Special Assistant to the Administrator, RHS at (202) 720–1628. Comments should be submitted to Ms. Williams at USDA—RHS, 1400 Independence Avenue, SW, Ag Stop 0743, Washington, D.C. 20250–0743.

SUPPLEMENTARY INFORMATION:

Title: Direct Single Family Housing Handbooks Supporting 7 CFR Part 3550.

Type of Request: New information collection.

Abstract: On April 8, 1996, the RHS published a Proposed Rule in the Federal Register reengineering and reinventing the direct Section 502 and 504 Single Family Housing (SFH) programs (61 FR 15395). That action proposed the consolidation of 16 separate regulations guiding the direct SFH programs into one streamlined rule. RHS proposed a significant 90 percent reduction in CFR coverage. To accomplish this objective, in part, we removed administrative guidance from the 16 regulations and proposed to provide same in Handbooks which would not be published in the Federal Register. In our Proposed Rule, we stated we would publish a Notice in the Federal Register on or about July 1,

1996, providing a 60-day comment period on the information collection requirements of the Handbooks. This Notice accomplishes that proposal.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to administer such programs and to prescribe regulations to ensure that these loans and grants made with Federal Funds are made to eligible applicants for authorized purposes, and that subsequent servicing and benefits provided to borrowers are consistent with the authorizing statute.

RHS offers a supervised credit program to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals living in rural areas. To assist individuals in obtaining affordable housing, a borrower's house payment may be subsidized to an interest rate as low as 1% and under the deferred mortgage program the subsidy can be reduced further. The amount of subsidy is based on the borrower's household income. The information requested by RHS is vital to be able to process applications for RHS assistance and make prudent credit and program decisions. It includes borrower financial information such as household income, assets and liabilities and monthly expenses. Without this information the Agency is unable to determine if a borrower would qualify for any services or if assistance has been granted that the borrower may not have been eligible for. In addition, proper liquidation and debt settlement decisions are made.

Another integral part of Agency lending requires borrowers to refinance to other credit when they are able to do so. If a borrower is unable to find other credit available at reasonable rates and terms, the Agency will continue to review the borrower for possible refinancing at periodic intervals. If it is determined that all loan servicing efforts have failed to produce a successful outcome the account will be liquidated through voluntary liquidation or foreclosure. The Agency may also accept a deed in lieu of foreclosure if it is in the best interest of the Government. The Agency may also settle debts through charge-off, compromise or adjustment.

The RHS has over 725,000 direct Sections 502 and 504 loans with approximately 625,000 customers in its portfolio. With our Fiscal Year (FY) 1996 direct sections 502 and 504 loan appropriation, the Agency anticipates making 35,000 new direct SFH loans this year. The accounting system established by RHS's predecessor Agency, the Farmers Home Administration (FmHA) to maintain its vast farm, housing, community and business loan programs is severely outdated and not capable of expansion to keep pace with an ever increasingly automated society. FmHA was not able to provide the same level of customer service provided by commercial lenders such as the escrow of real estate taxes and insurance for its customers and toll free telephone numbers to contact a servicing representative. These features are critical for RHS to provide prudent supervised credit to its very-low and low income customers and assist these families in becoming successful homeowners.

In May 1995, the RHS awarded a contract to Fiserv, Inc. and its subsidiary, Data-Link systems for the purchase of a commercial-off-the-shelf Dedicated Loan Origination and Servicing System (DLOS) which includes escrow capability. This system will replace the Agency's current Program Loan Accounting System (PLAS) and the Management Records System (MRS) and will provide agency personnel with the tools to deliver high quality customer services to its customers. RHS intends to adopt processes and techniques currently utilized by the private sector including centralized servicing and automation of many forms and processes. The system is being customized to provide the additional features and servicing benefits available to RHS customers to assist them in becoming successful homeowners. The Agency intends to begin implementing this system on October 1, 1996 with two pilot states. Other states will be phased into the DLOS system through FY 1996 with full implementation anticipated by September 30, 1997.

The centralized servicing unit will be located in St. Louis, Missouri, and will assume primary responsibility for the functions associated with servicing and managing the loan portfolio such as collection of loan payments, day to day loan servicing, escrowing, and accounting in a focused effort to monitor and reduce loan defaults thereby achieving our goal of having successful homeowners that can eventually refinance to commercial credit. The centralized unit will be staffed with many existing RHS employees.

RHS has been aggressively analyzing all existing burden imposed upon the public to obtain and retain SFH program assistance. A Task Force of RHS and Rural Development employees at the local, state and national level was established and worked with the DLOS team to eliminate all unnecessary burden. This significant effort included input from the private sector manufacturers of the DLOS system. The system which RHS has already purchased includes many industry standard forms. Wherever possible, RHS intends to utilize these industry standard forms, eliminate duplicative FmHA forms and make full use of our new expanded automation capabilities. For example, most forms which a current RHS borrower must complete can be system generated and contain all relevant system information such as the borrower's account number, address, property description, real estate taxes, insurance, income data, etc., thereby reducing unnecessary burden imposed on our customers. This will reduce the time it takes the public to complete required information, reduce the need to stock forms throughout Rural Development offices, and result in cost savings to the public. RHS has reduced the burden in many of its existing information collection dockets.

While many information collection dockets have been decreased, through thorough analysis and consolidation of existing regulations, and the narrower scope in which the Paperwork Burden Act of 1995 defines an information collection ''burden,'' many new areas of burden have surfaced which now appear in this proposed package. RHS has made every effort to analyze and reduce such burden to the maximum extent possible.

The information is collected from applicants, borrowers, application packagers, contractors, real estate brokers, employers, etc. In brief, all applicants and borrowers and any person with any type of a pecuniary interest in that of an applicant or recipient of a direct SFH loan or grant. The information is collected by RHS and Rural Development staff. RHS provides forms and guidelines to assist in the collection and submission of this information.

The information collected is used by the Agency to verify program eligibility requirements; continued eligibility requirements for borrower assistance; servicing of loans; eligibility for special servicing assistance such as: payment subsidies, moratorium (stop) on payments, delinquency workout agreements; liquidation of loans, and debt settlement. The information is also used to ensure that the direct SFH programs are administered in a manner consistent with legislative and administrative requirements. The information is typically submitted via hand delivery or the U.S. Postal Service

to the RHS or Rural Development office. Occasionally, information is submitted directly to RHS or Rural Development offices.

Public burden for the direct SFH programs is currently approved in several information collection dockets. These existing information collection dockets will be handled as follows:

- 7 CFR Part 1910, Subpart A—Receiving and Processing Applications. The direct SFH programs have no burden included in the existing approved information collection docket (0575–0134).
- 7 CFR Part 1944, Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations. The existing approved information collection docket (0575–0059) will be deleted at the final rule stage for Part 3550. The burden under this existing regulation is included in this proposed information collection docket.
- 7 CFR Part 1944, Subpart J—Section 504 Rural Housing Loans and Grants. The existing approved information collection docket (0575–0062) will be deleted at the final rule stage for 7 CFR Part 3550. The burden under this existing regulation is included in this proposed information collection docket.
- 7 CFR Part 1951, Subpart C—Offsets of Federal Payments to FmHA Borrowers. RHS will make a technical correction to the existing approved information collection docket (0575–0119) at the final rule stage of Part 3550 to remove the public burden for the direct Section 502 and 504 loan and grant programs. The burden for the direct SFH programs in this existing regulation is included in this proposed information collection docket.
- 7 CFR Part 1951, Subpart F—Analyzing Credit Needs and Graduation of Borrowers. RHS will make a technical correction to the existing approved information collection docket (0575–0093) at the final rule stage of Part 3550 to remove the public burden for the direct Section 502 and 504 loan and grant programs. The burden under this existing regulation for the direct SFH programs is included in this proposed information collection docket.
- 7 CFR Part 1951, Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts. The existing approved information collection docket (0575–0060) will be deleted at the final rule stage for 7 CFR Part 3550. The burden under this existing regulation is included in this proposed information collection docket.
- 7 CFR Part 1951, Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing. The existing approved information collection docket (0575–0105) will be deleted at the Final Rule stage for 7 CFR Part 3550. The burden under this existing regulation is included in this proposed information collection docket.
- 7 CFR Part 1955, Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property. RHS will make a technical correction to the existing approved information collection docket (0575–0109) at the final rule stage to delete the public burden for the direct Section 502 and 504 loan and grant programs. The burden under this existing regulation for the direct SFH programs is included in this proposed information collection docket.
- 7 CFR Part 1955, Subpart B—Management of Property. RHS will make a technical correction to the existing approved information collection docket (0575–0110) at the final rule stage to delete the public burden for the direct Section 502 and 504 loan and grant programs. The burden under this existing regulation is included in this proposed information collection docket.
- 7 CFR Part 1956, Subpart B—Debt Settlement—Farmer Programs and Housing. RHS will make a technical correction to the existing approved information collection docket (0575–0118) at the final rule stage to delete the public burden for the direct Section 502 and 504 loan and grant programs and transfer this regulation and information collection docket to the Farm Service Agency (FSA). The burden under this existing regulation for the direct SFH programs is included in this proposed information collection docket.

Estimate of Burden: Public reporting burden for this collection of information is estimated to range from 5 minutes to 1.5 hours per response.

Respondents: Applicants seeking financial assistance through RHS to purchase adequate housing in rural America, borrowers who have received such assistance and any person with a pecuniary interest in an applicant or borrower.

Estimated Number of Respondents: 750,000.

Estimated Number of Responses per Respondent: 3.3.

Estimated Total Annual Burden on Respondents: 839,763.

A complete copy of the Information Collection Package and DRAFT Handbooks is available from Barbara Williams, Information Collection Coordinator, RHS at the aforementioned address.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments must be received on or before September 16, 1996, to be assured of consideration. Comments received after such date will not be considered, therefore; the commentor must allow for sufficient mailing and delivery time. RHS encourages the submission of comments within 30 days. All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to Barbara Williams, Information Collection Coordinator, RHS, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Ag. Stop 0743, Washington, DC 20250–0743. A comment to RHS is best assured of having its full effect if RHS receives it within 30 days of publication of this notice.

Dated: July 12, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–18192 Filed 7–17–96; 8:45 am]

BILLING CODE 3410–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 56–96]

Foreign-Trade Zone 181—Akron-Canton, Ohio Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Akron-Canton Regional Airport Authority, grantee of Foreign-Trade Zone 181, requesting authority to expand its zone in the Akron-Canton, Ohio area, adjacent to the Cleveland/Akron Customs port of entry. The application was submitted pursuant to

the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 8, 1996.

FTZ 181 was approved on December 23, 1991 (Board Order 546, 57 FR 41, 1/2/92). The general-purpose zone currently consists of 110 acres within the 2,121-acre Akron-Canton Regional Airport in North Canton, Ohio.

The applicant, in a major revision to its zone plan, now requests authority to expand the general-purpose zone to include three new sites in Trumbull, Columbiana and Stark Counties (proposed Sites 2 through 4): *Proposed Site 2* (1,236 acres)—Youngstown-Warren Regional Airport, 1453 Youngstown-Kingsville Road, Trumbull County, Ohio; *Proposed Site 3* (124 acres, 2 parcels)—Columbiana County Port Authority port terminal facility (19 acres) on the Ohio River, 1250 St. George Street, East Liverpool, and, the port authority's Leetonia Industrial Park (105 acres), State Route 344, Leetonia, Ohio; and *Proposed Site 4* (843 acres)—Stark County Intermodal Facility, approximately one mile south of the City of Massillon, adjacent to State Route 21 in the southwestern corner of Stark County. This project is related to a northeast Ohio regional economic development project coordinated by the Northeast Ohio Trade and Economic Consortium. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 1, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Akron-Canton Regional Airport Authority, 5400 Lauby Road NW., North Canton, Ohio 44720

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 9, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–18257 Filed 7–17–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–475–031]

Large Power Transformers From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 2, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty finding on large power transformers (LPTs) from Italy. These final results of review cover one manufacturer/exporter of this merchandise and the period June 1, 1993, through May 31, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Analysis of the comments received resulted in no change in the weighted-average margin for these final results.

EFFECTIVE DATE: July 18, 1996.

FOR FURTHER INFORMATION CONTACT: Andrea Chu, Kris Campbell or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1995, the Department published in the Federal Register (60 FR 51455) the preliminary results of its administrative review of the antidumping duty finding on LPTs from Italy (37 FR 11772, June 14, 1972). We gave interested parties an opportunity to comment on our preliminary results. The petitioner, ABB Power T&D Co., Inc. (ABB), and the respondent, Tamini Costruzioni Elettromeccaniche S.R.L. (Tamini), submitted comments.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term ''transformers'' includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers shipments of transformers by Tamini during the period June 1, 1993, through May 31, 1994.

Changes Since the Preliminary Results

We have made the following changes in these final results.

1. We changed Tamini's negative net interest expense to zero.

2. With respect to Tamini's profit calculation, we computed the profit ratio by dividing Tamini's profit amount by its cost of production (COP), and not by the sales value as used in the preliminary results.

Analysis of Comments Received

Comment 1: Petitioner states that the Department understated the constructed values (CV) upon which foreign market value (FMV) was based by (1) Including a negative interest expense amount in selling, general and administrative (SG&A) expenses as a result of allowing Tamini to offset its short-term interest expense with an interest income amount greater than the expense, and (2) subtracting home market commission expenses as a circumstance-of-sale adjustment to CV without first including them in the initial CV calculation.

With respect to petitioner's claim concerning interest expense, Tamini responds that the Department allowed the negative interest expense offset adjustment in calculating COP in the

immediately preceding review and that petitioner did not object to this adjustment. Tamini further states that the nature of the large power transformer industry involves sales that require substantial lead times between order acceptance and shipment and that such sales tend to generate substantial interest income. Tamini contends that it is appropriate to apply its entire short-term interest income because such an analysis not only reflects accurately the company's actual COP, but also recognizes costs that Tamini incurred in generating interest income.

With respect to petitioner's argument concerning the omission of home market commissions in the calculation of CV, Tamini states that the Department did in fact include such commissions in the CV calculation before removing them through a circumstance-of-sale adjustment.

Department's Position: We agree with petitioner that short-term interest income may only be used to offset the short-term interest expense and cannot create a negative interest amount for purposes of determining SG&A. The Department's policy is to permit short-term interest income related to production as an offset to interest expense and not to COP. *See Frozen Concentrated Orange Juice From Brazil: Final Results of Administrative Review, 55 FR 26721, 26723* (1990); *Porcelain-on-Steel Cooking Ware From Mexico: Final Results of Administrative Review, 58 FR 43327* (1993). Therefore, we have set interest expense equal to zero for the final results.

However, we disagree with petitioner concerning its contention that CVs were further understated due to the omission of the home market commission expense. The Department first added an amount for home market direct selling expenses, including the commission expense, in calculating CV, then subtracted the same amount as a circumstance of sale adjustment. *See Comment 5, infra.*

Comment 2: Petitioner contends that the methodology used by Tamini to calculate the home market profit ratio is incorrect. Petitioner states that Tamini computed its home market profit ratio by dividing the amount of its profit by sales value instead of by its COP and that, as a result, this methodology inappropriately lowered Tamini's profit ratio and its CV.

Tamini responds that its profit methodology was accepted by the Department in the previous review and petitioner did not object to it. Tamini further states that this allocation is reasonable because it is the manner in which Tamini measures profitability internally.

Department's Position: We agree with petitioner. The home market profit ratio should be calculated by dividing the amount of the company's profit by COP and not by sales value, since the per-unit profit amount is derived by multiplying the profit ratio by the COP. Therefore, we corrected Tamini's home market profit ratio by dividing the amount of its total profit for calendar year 1993 by the cost of all transformers sold by the company in 1993, as reported in Tamini's response.

Comment 3: Petitioner asserts that the Department improperly included in the dumping analysis amounts for both expenses and revenues associated with technical services provided in the United States.

Tamini responds that the Department should include both technical service expenses and revenues in the dumping analysis because the services Tamini provided were an integral part of the sales transactions at issue. Tamini further contends that the fact that such services were not included in a lump-sum price for all products and services is irrelevant.

Department's Position: We disagree with petitioner and have continued to include both expenses and revenues associated with the technical services Tamini provided on the reported sales in our analysis. As in the preliminary results, we have included revenue from technical services connected with the sales in question in the unit price. We have also deducted expenses associated with the provision of these services as direct selling expenses. The information regarding technical services in Tamini's questionnaire response, and which we examined at verification, clearly indicates that the technical service expenses and revenues at issue were tied to the sales for which they were reported, *i.e.,* these expenses and revenues would not have been incurred or earned but for the sales in question. As we noted in our sales verification report, Tamini records sales, payment, and direct expense information on a transaction-specific basis in its accounting records; accordingly, we verified that these technical services were accurately reported on a per-unit basis without the use of allocations. *See Memorandum from Analyst to the File: Sales Verification Report for Tamini Costruzioni Elettromeccaniche S.R.L.* (October 2, 1995) at 2–5.

Comment 4: Tamini contends that, for one of the sales under review, the Department did not apply the interest expense ratio (total interest expense to the total cost of manufacturing) to the cost of manfacturing, but instead multiplied this ratio by only the sum of direct selling expenses and general and administrative expenses. Tamini states that, by doing so, the Department significantly understated the interest expenses for the CV calculation and requests that the Department correct its calculations.

Department's Position: Since we have decided to use interest income to offset interest expense only up to the amount of interest expense incurred in our SG&A calculation (*see* our response to *Comment 1, supra*), we did not allow any actual interest income amount that is greater than interest expense. Tamini's contention, which would simply affect the amount of the negative interest expense, is therefore moot.

Comment 5: Tamini claims that the Department double-counted U.S. indirect selling expenses by adding an amount representing U.S. indirect selling expenses to CV as a commission offset while failing to reduce Tamini's reported general and administrative expenses for a portion representing these indirect expenses.

Petitioner responds that the value of the general and administrative expenses claimed by Tamini to represent U.S. indirect selling expenses is new information that should not be considered for these final results. Petitioner states that the Department verified Tamini's general indirect selling expense, and that Tamini's attempt to segregate this expense into home market and U.S. portions in its case brief does not allow the Department sufficient opportunity to determine whether the allocation methodology is correct and deprives petitioner of its right to comment on this methodology.

Department's Position: We disagree with Tamini that the addition of U.S. indirect selling expenses to the CV as an offset to the deduction of the home market commission results in double-counting of U.S indirect selling expenses. Contrary to Tamini's claim, the SG&A portion of CV did not include an amount for U.S. indirect selling expenses prior to the commission offset adjustment. We requested in our questionnaire that Tamini provide indirect selling expenses associated with home market sales of the class or kind of merchandise, which we would have included as a component of the CV of the merchandise involved in the sales at issue. Tamini responded that it was unable to segregate indirect selling expenses from general and administrative expenses and it was also unable to isolate either indirect selling expenses or general and administrative

expenses incurred in the home market from those incurred elsewhere. Tamini therefore calculated a ratio of worldwide selling, general and administrative (SG&A) expenses to worldwide cost of goods sold. Tamini then multiplied this ratio by the cost of manufacture of the merchandise involved in each U.S. transaction to derive a per-unit amount for SG&A expenses.

While it is true that Tamini's worldwide SG&A expenses (the numerator in Tamini's SG&A ratio) include selling expenses incurred on sales outside the home market, Tamini's worldwide cost of goods sold (the denominator in Tamini's SG&A ratio) includes the costs of goods sold outside the home market. Accordingly, the per-unit amount of the SG&A expense attributable to indirect selling was not necessarily higher than that which would have been applied had Tamini been able to isolate and report only its home market expenses, since both the numerator and denominator of the ratio used were calculated on the same basis. Therefore, reducing CV by an amount that Tamini claims represents U.S. indirect selling expenses would understate the SG&A element of the CV calculation.

The SG&A amount that we included in the calculation of CV contained an amount for commissions. In accordance with section 353.56 of our regulations, we made a circumstance-of-sale adjustment by deducting this amount and offsetting this deduction by adding U.S. indirect expenses up to the amount of the commission. As explained above, this offset does not lead to double-counting of U.S. indirect selling expenses, such that an amount for U.S. indirect selling expenses must first be subtracted from the SG&A expenses included in CV, because the CV only contains an amount for SG&A attributable to home market sales. The adjustment is only for the difference, if any, between the commission amount in the CV and U.S. indirect selling expenses. It does not increase the amount of general expenses used in calculating the CV prior to such adjustments.

Although we are not adjusting CV in the manner suggested by respondent, we disagree with petitioner's assertion that information submitted by respondent concerning this issue is untimely. Respondent submitted the data contained in its case brief in the process of responding to our initial and supplemental questionnaires.

Final Results of Review

As a result of this review, we determine that no dumping margins exist for Tamini for the period June 1, 1993, through May 31, 1994.

The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Tamini will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 92.47 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 8, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18260 Filed 7–17–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Olympic Coast National Marine Sanctuary Advisory Council Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; Meeting of the Olympic Coast National Marine Sanctuary Advisory Council.

SUMMARY: The Advisory Council was established in December 1995 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Olympic Coast National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Friday, July 26, 1996, from 10:00 until 4:00. The meeting will be held in the Makah Tribal Council Offices in Neah Bay, Washington.

AGENDA: General issues related to the management of the Olympic Coast National Marine Sanctuary are expected to be discussed, including a report from the Sanctuary Manager, reports from the education and research working groups, a discussion on a strategic plan for education, and a report on research activities conducted on the NOAA ship McArthur.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Nancy Beres at (360) 457–6622 or Elizabeth Moore at (301) 713–3141

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: July 12, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–18193 Filed 7–17–96; 8:45 am]

BILLING CODE 3510–08–M

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in Futures and Options on Venezuelan ''DCB'' Brady Bonds

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and futures options on Venezuelan ''DCB'' Brady Bonds. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Reference should be made to the CME futures and options on Venezuelan ''DCB'' Brady Bonds.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC, 20581, telephone 202–418–5277.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 12, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–18263 Filed 7–17–96; 8:45 am]

BILLING CODE 6351–01–P

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, August 2, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–18414 Filed 7–16–96; 2:18 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, August 9, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–18415 Filed 7–16–96; 2:18 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, August 16, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–18416 Filed 7–16–96; 2:18 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, August 23, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–18417 Filed 7–16–96; 2:18 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, August 30, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–18418 Filed 7–16–96; 2:18 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, July 25, 1996.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of

the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 15, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–18435 Filed 7–16–96; 2:18 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: August 13, 1996 from 0800 to approximately 1735, August 14, 1996 from 0800 to approximately 1730, and August 15, 1996 from 0800 to approximately 1240.

Place: Federal Highway Administration Conference Room, 901 N. Stuart Street, Ste. 304, Arlington, VA.

Matters of be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms Kimberly Kay, 8000 Westpark Drive, Suite 400, McLean, VA 22102, or telephone 703 506–1400 extension 552.

Dated: July 11, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–18161 Filed 7–17–96; 8:45 am]

BILLING CODE 5000–04–M

Privacy Act of 1974; Notice to Delete and Amend Record Systems

AGENCY: Office of the Secretary, DOD.

ACTION: Notice to delete and amend record systems.

SUMMARY: The Office of the Secretary of Defense proposes to delete one and amend three systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion is effective July 18, 1996. The amendments will be effective on August 19, 1996, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301091155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695090970 or DSN 225090970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: July 11, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION
DODDS 17

SYSTEM NAME:

Teacher Back Pay Project *(February 22, 1993, 58 FR 10244).*

Reason: The Back Pay Project has been completed, therefore the system is being deleted. The records have been subsumed in the individuals' official personnel folders which are maintained in system of records OPM/GOVT-1.

AMENDMENTS
DGC 04

SYSTEM NAME:

Personnel Security Clearance Adjudication Files *(November 1, 1995, 60 FR 55547).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete the second paragraph and replace with 'Defense Office of Hearings and Appeals, Western Hearing Office, Second Floor, Building A, 21820 Burbank Boulevard, Suite 250, Woodland Hills, CA 91367096484.'

Insert the following as the third paragraph 'Defense Office of Hearings and Appeals, Western Department Counsel, Second Floor, Building A, 21820 Burbank Boulevard, Suite 235, Woodland Hills, CA 91367096484.'

Insert new fifth paragraph 'Defense Office of Hearings and Appeals, Boston Hearing Office, Room D-017A, Kansas Street, Natick, MA 01760095055.'

* * * * *

DGC 04

SYSTEM NAME:

Personnel Security Clearance Adjudication Files.

SYSTEM LOCATION:

Defense Office of Hearings and Appeals, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203091995;

Defense Office of Hearings and Appeals, Western Hearing Office, Second Floor, Building A, 21820 Burbank Boulevard, Suite 250, Woodland Hills, CA 91367096484; and

Defense Office of Hearings and Appeals, Western Department Counsel, Second Floor, Building A, 21820 Burbank Boulevard, Suite 235, Woodland Hills, CA 91367096484.

Decentralized inactive segments are held at the Washington National Records Center, and at the U.S. Army Investigative Records Depository, Fort Meade, MD 20755. Automated Joint Adjudicative Clearance System records are maintained on a system V50902, Defense Central Index of Investigations, at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD, with access by computer terminals at Defense Office of Hearings and Appeals locations.

Defense Office of Hearing and Appeals, Boston Hearing Office, Room D-017A, Kansas Street, Natick, MA 01760095055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Government, contractor, state and local government employees, military personnel, and other persons whose security clearance or trustworthiness cases are referred to the Defense Office of Hearings and Appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes automated case status records for current cases and inactive cases, an alphabetical card index file for records of cases prior to 1984 used for recording actions taken and for identification and location of case files within the system, and individual case files.

Case files include requests for investigation, clearance, and adjudication; general correspondence relating to cases; personnel security questionnaires; investigative reports

prepared by various investigative agencies, which may include information obtained from interviews, court documents, law enforcement records, business records, and other sources; medical and psychiatric records and evaluations; adjudicator's case summaries; Defense Industrial Security Clearance Office (DISCO) referral recommendations; correspondence between or concerning applicants for clearance and Defense Office of Hearings and Appeals (DOHA) elements, DISCO, medical facilities, DoD Psychiatric Consultants, investigative agencies, Military Departments, other DoD Components and Federal agencies, Personnel Security Specialists, Department Counsel, Administrative Judges, Appeal Board, and elements of the Office of the Secretary of Defense and Defense Investigative Service; written interrogatories and Statements of Reasons (SIR) to applicants, with replies, pleadings or correspondence filed and served on all parties, recommendations, summaries, and records of adjudicative actions; transcripts of hearings; exhibits admitted into evidence; decisions of Administrative Judges and Appeal Boards; and such other matter as may be included in the record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 140; 31 U.S.C. 1535; Executive Orders 10865, as amended, 10450, as amended, 12829, 9397, and 12698.

PURPOSE(S):

These records are collected and maintained to determine whether the granting or retention of a security clearance to or affirmative trustworthiness decision for an individual is clearly consistent with the national interest; to record adjudicative actions and determinations; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to assist authorized DoD Consulting Psychiatrists to compile evaluations and reports; to respond to inquiries from within the executive and legislative branches when the inquiry is made at the request of the individual or for official purposes; to monitor and control adjudicative actions and processes.

Automated case status system and card files are used to record statistics, provide location and status and internal identification of cases, to prepare listings and statistical reports and summaries, and to monitor work flow and actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Case files referred by Federal Emergency Management Agency (FEMA) for adjudication by DOHA are provided to FEMA when action is completed, along with recommended clearance decisions.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, and on file cards; electronic records are stored on magnetic or optical media; certain automated records are maintained on magnetic tapes and disks at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

RETRIEVABILITY:

Filed alphabetically by name, or by case number. Access to computer data may be made by name and Social Security Number and a combination of name and other personal identifying data.

SAFEGUARDS:

Records are stored in a secure area accessible only to DOHA authorized personnel. Except for a small number of records that are classified and need to be safeguarded as classified materials, all other records are stored, processed, transmitted and protected as the equivalent of For Official Use Only information. Records are accessed by the custodian of the record system and by persons responsible for servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits with password control. Individual passwords are changed periodically and upon departure of personnel. The dedicated data feature prevents access from standard dial-up telephones. Automated systems are operated by DOHA and by the Defense Investigative Service, Personnel Investigations Center, Information Systems Division. Only DOHA personnel are given the security level on the computer system needed to amend, add, alter, change or delete DOHA records. Other authorized contributors and users of the Defense Central Index of Investigations have read-only access to DOHA case status records in the system.

RETENTION AND DISPOSAL:

Completed case files are returned to non-DoD agencies and are subject to records retention schedules of the owning agency after completion of DOHA action. Case files for military and DoD civilian personnel security clearance cases will be returned to the appropriate DoD Component after DOHA completes its processing of those cases. Copies of case summaries and recommended adjudication decisions and ancillary documents for all cases are retained for internal reference purposes by DOHA personnel. Industrial security and trustworthiness cases are retained at DOHA for two years after annual cut-offs, then are retired for twenty years at the Washington National Records Center and then destroyed.

Inactive Department of Defense case files prior to 1982 are maintained at the U.S. Army Investigative Records Repository, Ft. Meade, MD 20755. Automated case tracking records and alphabetical card index files are retained as locator for active and inactive cases and for statistical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203091995.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203091995.

Individual should provide their full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

Individuals should provide their full name, and any former names used, date and place of birth, Social Security Number.

Requests must be signed and notarized or, if the individual does not

have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: '*I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.*' *(Signature).*

Some records may be made available for review at DOHA Headquarters, upon appointment made with Director. Individual must present picture identification, such as a valid driver's license.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from investigative reports from Federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports and evaluations; correspondence from contractors, employers, organizations of assignment and Federal agencies, DoD organizations, agencies and offices; from individuals, their attorneys or authorized representatives; from witnesses at hearings or documentary evidence made part of the hearing record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

DGC 17

SYSTEM NAME:

Hearings and Appeals Case Files *(November 1, 1995, 60 FR 55548).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete the second paragraph and replace with 'Defense Office of Hearings and Appeals, Western Hearing Office, Second Floor, Building A, 21820 Burbank Boulevard, Suite 250, Woodland Hills, CA 91367096484.'

Delete the third paragraph and replace with 'Defense Office of Hearings and Appeals, Western Department Counsel, Second Floor, Building A, 21820 Burbank Boulevard, Suite 235, Woodland Hills, CA 91367096484.'

Delete the fourth paragraph, and replace the fifth paragraph with 'Defense Office of Hearings and Appeals, Boston Hearing Office, Room D-017A, Kansas Street, Natick, MA 01760095055.'

* * * * *

DGC 17

SYSTEM NAME:

Hearings and Appeals Case Files.

SYSTEM LOCATION:

Defense Office of Hearings and Appeals, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203091995;

Defense Office of Hearings and Appeals, Western Hearing Office, Second Floor, Building A, 21820 Burbank Boulevard, Suite 250, Woodland Hills, CA 91367096484;

Defense Office of Hearings and Appeals, Western DepartmentCounsel, Second Floor, Building A, 21820 Burbank Boulevard, Suite235, Woodland Hills, CA 91367–6484; and

Defense Office of Hearings and Appeals, Boston Hearing Office, Room D-017A, Kansas Street, Natick, MA 01760–5055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Beneficiaries and providers under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) that have unresolved disputes with the Office of CHAMPUS (OCHAMPUS);

(2) Students in the Department of Defense Education Activity (DODEA).

CATEGORIES OF RECORDS IN THE SYSTEM:

CHAMPUS-related categories include: Appointment memoranda and transmittal correspondence; case files; petitions and answers to petitions; exhibits admitted into evidence; written transcripts or electronic records of hearings; pleadings or correspondence properly filed and served on all parties; claims and all other pertinent materials relating to a claim; billings, applications or approval forms; medical records, family history files; such other matter as the hearing officer may include in the record, rulings or orders issued by the hearing office, and the hearing officer's written decision.

Education-related categories include: Records pertaining to students attending DoD-operated dependent schools in case files pertaining to hearings and appeals conducted pursuant to Appendix C to 32 CFR part 80, Special Education Children with Disabilities Within the Section 6 School Arrangements; 32 CFR part 57, Education of Handicapped Children in DoD Dependent Schools; or 32 CFR part 56, Nondiscrimination on the basis of Handicap in Programs and Activities Assisted or conducted by the Department of Defense, to afford impartial due process hearings and administrative appeals on the early intervention services or identification, evaluation, and educational placement of, and free appropriate public education provided to a disabled child; documents associated with such hearing, including: Appointment memoranda and transmittal correspondence; petitions and answers to petitions, the written transcript or the electronic record of the hearing, exhibits admitted into evidence; pleadings, written submissions or correspondence properly filed and served on all parties, such other matter as the hearing officer may include in the record, rulings or orders issued by the hearing office, the hearing officer's written decision; documents associated with administrative appeals from the hearing officer's written decision; including the administrative record on appeal, pleadings, written submissions or correspondence properly filed and served on all parties, rulings or orders issued by the appeal board, and the appeal board's written decision.

Common to both categories, automated case status records for current cases and inactive cases are used to provide location and status and internal identification of cases, to prepare listings and internal statistical reports, and to monitor workflow and case handling actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 140 and E.O. 9397.

PURPOSE(S):

Records are collected and maintained to support claims resolution and impartial due process hearings/and or ancillary proceedings to parties requesting them and to provide decisions to those parties involved in the hearings; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to respond to inquiries from offices within the executive and legislative branches

when the inquiry is made at the request of the individual, or for official purposes; to monitor and control adjudicative actions and processes.

The automated case tracking system is used to record statistics, provide location and status and internal identification of cases, to prepare listings and internal statistical reports, and to monitor work flow and case handling actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, and on file cards; electronic records are stored on magnetic or optical media.

RETRIEVABILITY:

Filed alphabetically by beneficiary, provider, child's or sponsor's name, Social Security Number, or by case number. Access to computer data may be made by name, Social Security Number, or a combination of other personal identifying data.

SAFEGUARDS:

Records are stored in a secure area accessible only to DOHA authorized personnel. All records are stored, processed, transmitted and protected as the equivalent of For Official Use Only information. Records are accessed by the custodian of the record system and by persons responsible for using or servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits with password control. Individual passwords are changed periodically and upon departure of personnel. The dedicated data feature prevents access from standard dial-up telephones.

RETENTION AND DISPOSAL:

Along with decisions and other materials develoed during DOHA processing of cases, the original case files, tapes, exhibit files, and associated documentation are returned to OCHAMPUS and the DoD Education Activity and are subject to records retention schedules of the owning agency after completion of DOHA action. Copies of decisions and audio tapes are destroyed when no longer needed for reference purposes but not later than 6 years after rendering a decision.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203–1995.

Individual should provide full name and any former names used, date and place of birth, and Social Security Number.

Some records may be made available for review at DOHA Headquarters upon appointment made with the Director. Individual must be able to provide picture identification or a valid driver's license.

Requests must be signed and notarized or, if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both. (Signature).'*

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

For OCHAMPUS Cases: Case files referred by OCHAMPUS to DOHA Administrative Judges; correspondence and supplementary material from DOHA to the parties in connection with the handling of the case; correspondence, pleadings, written submissions and evidence associated with hearings from parties to such proceedings; DoD correspondence associated with receipt and transmittal of case files.

For DoD Education Activity Cases: Case files assigned to DOHA Administrative Judges for hearing and/or administrative appeals; correspondence and supplementary material from DOHA to the parties in connection with the handling of the case; correspondence, pleadings, written submissions and evidence associated with hearings or appeals from parties to such proceedings; rulings, orders, and written decisions from hearing officers or appeal board; correspondence from individuals, their attorneys, or authorized representatives; and DoD correspondence associated with receipt and transmittal of case files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOSIA 01

SYSTEM NAME:

OSIA Treaty Inspection Manpower Management System *(February 22, 1993, 58 FR 10255)*

CHANGES:

* * * * *

SYSTEM LOCATION:

Change '300 West Service Road' to '201 West Service Road'.

* * * * *

PURPOSES:

Delete entry and replace with 'To manage OSIA Treaty Monitoring and Inspection activities, including personnel resources, manpower/billet management, passport status, mission scheduling and planning, inspection team composition, inspector and transport list management, inspector training, and inspection notification generation.'

* * * * *

SYSTEM MANAGER AND ADDRESS:

Delete entry and replace with 'TIIMS System Administrator, 201 West Service Road, Dulles International Airport, Post Office Box 17498, Washington, DC 20041–0498.'

* * * * *

DOSIA 01

SYSTEM NAME:

OSIA Treaty Inspection Manpower Management System.

SYSTEM LOCATION:

Records in the system are located at the On-Site Inspection Agency, 201 West Service Road, Dulles International Airport, Washington, DC 20041–0498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affiliated with the On-Site Inspection Agency, either by military assignment, civilian employment, or contractual support agreement. Individuals are weapons inspectors, linguists, mission schedulers/planners, personnel assistants/specialists, portal rotation specialists, operation technicians, passport managers, clerical staff, and database management specialists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes individual's name, Social Security Number, date of birth, city/state/country of birth, education, marital status, gender, race, civilian or military member, rank (if military), security clearance, years of federal service, occupational category, job organization and location, and emergency locator information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 125 and Executive Order 9397.

PURPOSES:

To manage OSIA Treaty Monitoring and Inspection activities, including personnel resources, manpower/billet management, passport status, mission scheduling and planning, inspection team composition, inspector and transport list management, inspector training, and inspection notification generation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDINGCATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer and computer output products.

RETRIEVABILITY:

Records may be retrieved by name or Social Security Number.

SAFEGUARDS:

Records are stored in a computer system with extensive intrusion safeguards.

RETENTION AND DISPOSAL:

Records are maintained for as long as the individual isassigned to OSIA. Upon departure from OSIA, records concerning that individual are removed from the active file and retained in an inactive file for ten years. Information that has been held in the inactive file for ten years is deleted.

SYSTEM MANAGERS AND ADDRESS:

TIIMS System Administrator, 201 West Service Road, Dulles International Airport, Post Office Box 17498, Washington DC 20041–0498.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TIIMS System Administrator, 201 West Service Road, Dulles International Airport, Post Office Box 17498, Washington DC 20041–0498.

The inquiry should include full name and Social SecurityNumber.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TIIMS System Administrator, 201 West Service Road, Dulles International Airport, Post Office Box 17498, Washington, DC 20041–0498.

The inquiry must include full name and Social SecurityNumber.

CONTESTING RECORDS PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, obtained from other personnel record sources, and from the individual's superiors and assignment personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–18182 Filed 7–17–92; 8:45 am]

BILLING CODE 5000–04–F

Department of the Air Force

Cost Comparison Studies

The Air Force is conducting the following cost comparison studies in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation	Cost comparison study
Maxwell AFB, Alabama	Grounds Maintenance.
Maxwell AFB, Alabama	Library.
Eielson AFB, Alaska	Services Activities.
Elmendorf AFB, Alaska	Power Production.
Travis AFB, California	Military Family Housing Maintenance.
Buckley ANG Base, Colorado	Airfield Management.
Eglin AFB, Florida	Education Services.
Eglin AFB, Florida	Library.
Tyndall AFB, Florida	Multi-Function Study: Base Operating Support & Backshop Aircraft Maintenance.
Andersen AFB, Guam	Military Family Housing Maintenance
Andrews AFB, Maryland	Administrative Support.
Otis ANGB, Massachusetts	Transient Aircraft Maintenance.
Columbis AFB, Mississippi	Base Operating Support.
Keesler AFB, Mississippi	Grounds Maintenance.
Keesler AFB, Mississippi	Laundry.
Nellis AFB, Nevada	Military Family Housing Maintenance.
McGuire AFB, New Jersey	Military Family Housing Maintenance.

Installation	Cost comparison study
Altus AFB, Oklahoma	Aircraft Maintenance.
Tinker AFB, Oklahoma	Grounds Maintenance.
Goodfellow AFB, Texas	Grounds Maintenance.
Lackland AFB, Texas	Animal Caretaking.
Lackland AFB, Texas	Grounds Maintenance.
Laughlin AFB, Texas	Aircraft Maintenance.
Laughlin AFB, Texas	Base Operating Support.
Bolling AFB, Washington DC	Military Family Housing Maintenance.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–18228 Filed 7–17–96; 8:45 am]

BILLING CODE 3910–01–M

Office of the Secretary

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of membership of the DIA Performance Review Committee (PRC).

SUMMARY: This notice announces the appointment of the Performance Review Committee (PRC) of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service (DISES). Publication of PRC membership is required by U.S.C. 1601(a)(4).

The PRC provides fair and impartial review of DISES performance appraisals and makes recommendations to the Director, DIA, regarding performance, performance awards, pay adjustments, retention in DISES, and at the applicable 3-year cycle, DISES recertification.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Office for Human Resources, Defense Intelligence Agency (DAH–1), 200 MacDill Blvd, Bolling Air Force Base, Washington, DC 20340.

Primary Members

Mr. Jeremy C. Clark, Deputy Director (Chairman)
Mr. John T. Berbrich, Chief of Staff
BG Donald L. Kerrick, Deputy Director for Operations
Ms. Kathleen P. Turner, Chief, Plans, Programs, and Operations Staff
Mr. William R. Grundmann, Deputy Director for Intelligence Production

Alternate Members

Mr. Arthur A. Zuehlke, Vice Deputy Director for Combat Support
Mr. Lewis A. Prombain, Comptroller
Mr. Charles L. White, Chief, Office of Diversity Management
Ms. Dolores D. Greene, Deputy Director for Administration
Ms. Barbara A. Duckworth, Vice Deputy Director for Operations
Mr. William J. Allard, General Counsel

Dated: July 11, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–18160 Filed 7–17–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Notice of Intent To Prepare Environmental Impact Statements for Employment of Surveillance Towed Array Sonar System (SURTASS) Low Frequency Active (LFA) Sonar

SUMMARY: Pursuant to Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) the Navy is announcing its intent to prepare an Environmental Impact Statement (EIS) under each authority for the operational employment of the SURTASS LFA system.

DATES: Public scoping meetings will be held in (1) Norfolk, Virginia on August 6, 1996 at 7:00 p.m., at the Granby High School Auditorium, in (2) San Diego, California on August 8, 1996 at 7:00 p.m., at the Roosevelt Jr. High School, and in (3) Honolulu, Hawaii on August 13, 1996 at 7:00 p.m., at the Washington Intermediate School. Written comments regarding the scope of these environmental documents must be submitted by September 4, 1996.

ADDRESSES: Comments and requests for additional information should be addressed to the Office of the Chief of Naval Operations, Code N874, c/o Clayton H. Spikes (703) 418–1866, Marine Acoustics, Inc., Suite 901, 2345 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The SURTASS LFA sonar employs low frequency sound propagation (less than 1000 Hz) to detect return echoes from objects on and under the sea. The LFA system will provide the U.S. navy an improved detection capability that does not rely solely on noise generated by the object to be detected. In support of its national defense mission, the Navy proposes to make the LFA system available to Fleet Commanders for world wide employment to enhance antisubmarine capabilities.

The analyses to be conducted will address the potential impact of low frequency sound on the marine environment, including potential auditory, behavioral, and physiological impacts on marine mammals and other marine creatures. Alternatives to be studied, in addition to the no action alternative, include employment of the system with various combinations of mitigation measures such as detection and avoidance of sensitive species or areas, and modification of system use to eliminate or minimize the potential for environmental effects.

The analysis prepared under the authority of Executive Order 12114 will assess potential environmental impacts beyond the U.S. territorial sea. The analysis prepared under NEPA will assess potential environmental impacts within the U.S. territorial sea. Although these analyses will be prepared under distinct authority, to ensure complete consideration of the potential for indirect and cumulative effects, and for the convenience of the public, these analyses will be conducted concurrently, will be extensively cross referenced, and will be made available for public review as a package.

The Navy anticipates employment of a tiered approach to these studies. As a first step the Navy plans to complete a global review of LFA operational deployment. That review may be sufficient to evaluate environmental impacts and allow the development of appropriate mitigation measures for use in some ocean areas. The initial review may also identify other ocean regions which, because of their ecological sensitivity or marine species density, require more analysis before a decision can be made regarding LFA employment in these areas. These areas would be examined in additional studies, or tiers,

building upon the foundation of the initial document.

Federal, state and local agencies, as well as interested organizations and individuals, are encouraged to participate in the scoping process for the EIS to determine the range of issues and alternatives to be addressed. Three public scoping meetings to receive oral and written information will be held: (1) At 7:00 p.m. August 6, 1996 at the Granby High School Auditorium, 7101 Granby Street, Norfolk, Virginia; (2) At 7:00 p.m. on August 8, 1996 at the Roosevelt Junior High School, 3366 Park Boulevard, San Diego, California, and (3) at 7:00 p.m. on August 13, 1996 at the Washington Intermediate School, 1633 South King Street, Honolulu, Hawaii. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. Longer comments should be summarized at the public meeting or mailed to the address listed at the end of this announcement. All written comments should be submitted no later than September 4, 1996 at the Office of the Chief of Naval Operations, Code N874, c/o Clayton H. Spikes (703) 418–1866, Marine Acoustics, Inc., Suite 901, 2345 Crystal Drive, Arlington, Virginia 22202.

Dated: July 15, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–18264 Filed 7–17–96; 8:45 am]

BILLING CODE 3810–FF–M

DELAWARE RIVER BASIN COMMISSION

Water Quality Regulations; Proposed Amendments to Comprehensive Plan, Water Code of the Delaware River, Administrative Manual—Part III Water Quality Regulations; Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on modifications to its proposed amendments to its Comprehensive Plan, Water Code and Water Quality Regulations concerning water quality criteria for toxic pollutants, and policies and procedures to establish wasteload allocations and effluent limitations for point source discharges to Zone 2 through 5 (Trenton, New Jersey to the Delaware Bay) of the tidal Delaware River.

DATES: The public hearing will be held on Thursday, September 5, 1996 beginning at 10:00 a.m. and continuing as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be 5:00 p.m. on September 5, 1996.

ADDRESSES: The hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

Written comments should be submitted to Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, at (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION:

Background and Rationale

On October 5, 11 and 13, 1995, the Commission held public hearings on proposed amendments to its water quality regulations as noticed in the Federal Register, Vol. 60, No. 143, July 26, 1995 and Vol. 60, No. 183, September 21, 1995. The public hearing record, originally scheduled to close on November 13, 1995, was extended by the Commission at its October 25, 1995 business meeting to December 13, 1995. Oral and written comments were received from 31 individuals and organizations as well as a coalition of 14 industrial and municipal dischargers to the Delaware Estuary.

As a result of comments received on that proposal and discussions with the Commission's Water Quality and Toxics Advisory Committees, the Commission has decided to modify its initial proposal. The proposal, as modified, is summarized below and is the subject of the September 5, 1996 public hearing.

Specifically, water quality criteria for selected toxic pollutants are proposed for incorporation in the Comprehensive Plan and Article 3 of the Water Code and Water Quality Regulations as stream quality objectives. Revisions are also proposed for Article 4 of the Water Quality Regulations describing the policies and procedures to be used to establish wasteload allocations for those discharges containing pollutants which impact the designated uses of the river.

Adoption of these revisions will provide a mechanism for identifying toxic pollutants which may impair aquatic life and human health, and developing uniform and equitable wasteload allocations for these pollutants for all NPDES discharges to the tidal Delaware River. The permitting authorities of the states will utilize the allocations developed by the Commission to establish effluent limitations for NPDES permittees in their jurisdiction.

Modifications to the initial proposal which resulted from the public participation process include the following:

1. Revised numerical values for the stream quality objectives for five parameters,

2. Inclusion of numerical factors to convert total recoverable water quality criteria for seven metals into dissolved stream quality objectives,

3. Inclusion of language requiring the Commission to identify and designate critical habitat within the tidal Delaware River,

4. Revised language regarding discharges to exposed benthic habitat,

5. Inclusion of a provision for a demonstration to support alternative requirements for dispersion areas (or mixing zones) where stream quality objectives for the protection of aquatic life from acute effects may be permitted,

6. Deletion of tables of values of Minimum Performance Standards, and replacement with language describing the basis for establishing Minimum Performance Standards,

7. Inclusion of language specifying the order of preference for information/data used to establish initial loadings for allocation of wasteloads, and

8. Revised language on adjustments for pollutants in intake water.

Copies of the full text of the proposed amendments may be obtained by contacting Ms. Weisman at the address provided in **FOR FURTHER INFORMATION CONTACT.** Persons wishing to testify are requested to notify the Secretary in advance.

Delaware River Basin Compact, 75 Stat. 688.

Dated: July 9, 1996.

Susan M. Weisman,

Secretary.

[FR Doc. 96–18095 Filed 7–17–96; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This

notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: August 1–3, 1996.

TIMES: August 1, 1996—Subject Area Committee #2, 8:30 a.m.–3:00 p.m., (closed); Subject Area Committee #1, 3:00–5:00 p.m., (open); Design and Methodology Committee, 3:00–5:00 p.m., (open); and Executive Committee, 5:00–6:00 p.m. (open), 6:00–7:00 p.m. (closed); August 2, 1996—Full Board, 8:45 a.m.–10:00 a.m., (open); Subject Area Committee #2, 10:00–11:00 a.m., (closed), 11:00 a.m.–12:00 Noon, (open); Achievement Levels Committee, 10:00 a.m.–12:00 Noon, (open); Reporting and Dissemination Committee, 10:00 a.m.–12:00 Noon, (open); Full Board, 12:00 Noon–1:30 p.m., (closed), 1:30–4:15 p.m., (open); August 3, 1996—Full Board, 8:30 a.m. until adjournment, approximately 12:00 Noon, (open).

LOCATION: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Subject Area Committee #2 (SAC 2) will meet in closed session on August 1 from 8:30 a.m. to 3:00 p.m., and partially closed session on August 2 from 10:00–11:00 a.m. On August 1, the Committee will review the items for the 1997 grade 8 arts probe and the 1997 grade 12 arts field test. On August 2, the Committee will review the draft items and findings from the NAEP writing pilot test. These meetings must be conducted in closed session because references will be made to specific items from the assessments and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. During the open portion of the SAC #2 meeting from 11:00 a.m.–12:00 Noon, the Committee will receive an update on test development activities in the arts and review the draft framework policy.

On August 1, from 3:00 p.m. to 5:00 p.m., there will be open meetings of Subject Area Committee #1 (SAC #1) and the Design and the Methodology Committee. There are three agenda items for SAC #1 meeting: (1) Review of the draft paper on NAEP foreign language issues and options; (2) update presentation on test development activities in reading and civics; and (3) review of the draft policy framework. The Design and Methodology Committee will receive a report from the chair of the Ad Hoc Advisory Panel meeting on sampling issues for the 1998 cycle of NAEP. They will also discuss the technical implications of the Design/Feasibility report submitted to the Board as part of its planning effort.

Also on August 1, there will be a partially closed meeting of the Executive Committee. During the open portion of the meeting, 5:00–6:00 p.m., the Committee will discuss procedures for communication between ACES and NAGB and hear an update on the Work Group on Planning. The Committee will then meet in closed session from 6:00–7:00 p.m. to continue the discussions about the development of cost estimates for the NAEP and future contract initiatives. Public disclosure of this information would likely have an adverse financial affect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

Also in closed session, the Committee will discuss the qualifications of current Board members to serve as Chairman and Vice Chairman of NAGB. Based upon these discussions, the Board will elect a Vice Chairman and recommend a Chairman to the Secretary. This portion of the session will relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and, as such, is protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

On August 2, 1996 the full Board will convene in open session from 8:45 a.m. to 10:00 a.m. The agenda for this session includes approval of the agenda, the report of the Executive Director, and an update on NAEP by the Commissioner of the National Center for Education Statistics. Between 10:00 a.m. and 12:00 Noon, there will be a partially closed meeting of the Subject Area Committee #2, and there will be open meetings of the Achievement Levels and the Reporting and Dissemination committees.

The Achievement Levels Committee will discuss the final plans for the second pilot study in preparation for the 1996 level setting activities in science. They will also review the plans for the level-setting meeting in science, including composition of panels, feedback information for panelists, and procedures for the selection of exemplar exercises in science.

The Reporting and Dissemination Committee will consider the following items: A release plan for the 1994 long-term trend report; the use of NAEP framework by teachers and curriculum developers; within-grade reporting of 1996 NAEP science results; the reporting of the link between NAEP and TIMSS (Third International Mathematics and Science Study); and the market basket approach in NAEP reporting.

Beginning at 12:00 Noon, until 1:30 p.m., the full Board will meet in closed session. The Board will hear a briefing on the Long Term Trend Report for 1994. This report will include references to specific items from the assessments. This portion of the meeting must be closed because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

The meeting will be open from 1:30 until 4:15 p.m. when the Board will discuss the recommendations for the redesign of NAEP and hear an update an ACES.

On August 3, at 8:30 a.m., until adjournment, approximately 12:00 Noon, the full Board will reconvene. The agenda includes discussion on the implementation of the NAEP Redesign; reports from the Board's standing committees—Subject Area #1, Subject Area 2, Achievement Levels, Reporting and Dissemination, Design and Methodology, and the Executive Committee; and election of a Vice Chairman and recommendation of a Chairman to the Secretary.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: July 15, 1996.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 96–18261 Filed 7–17–96; 8:45 am]

BILLING CODE 4000–01–M

Office of Post Secondary Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Filing the Fiscal Operations Report for 1995–96 and Application to Participate for 1997–98 (FISAP) in the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study (FWS) Programs (ED FORM 646–1; OMB No. 1840–0073).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 1997 funds—for use in the 1997–98 award year (July 1, 1997 through June 30, 1998)—under the Federal Perkins Loan, FWS, and FSEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. However, the Secretary will not allocate funds under the Federal Perkins Loan, FWS, and FSEOG programs for the 1997–98 award year to any currently ineligible institution unless the institution files its institutional participation application and other documents required for an eligibility and certification determination by the closing date that will appear in a separate notice in the Federal Register.

The Secretary further gives notice that an institution that had a Federal Perkins Loan fund or expended FWS or FSEOG funds during the 1995–1996 award year (July 1, 1995, through June 30, 1996) is required to submit a Fiscal Operations Report to report its program expenditures as of June 30, 1996, to the Secretary.

Applicants that did not participate in the Federal Perkins Loan Program, FWS Program, or FSEOG Program in the 1995–96 award year will be required to submit data for the application portion of the FISAP only. The Department is mailing only the application portion of the FISAP to first-time applicants.

In addition, an institution must submit one original completed FISAP signature page and one original signed combined lobbying, debarment, and drug-free workplace certifications form (ED 80–0013 and referred to collectively as the ''compliance certifications'' form) for the 1997–98 award year.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, Subpart 2, respectively, of title IV of the Higher Education Act of 1965, as amended.

DATES: *Closing Date and Methods for Submitting a FISAP and Required Signed Documents.* An institution may submit its FISAP by—

(1) Submitting the completed data on a data diskette provided by the Department of Education (the Department);

(2) Creating a tape from data stored on a mainframe computer and submitting that tape in a format defined by the Department; or

(3) Transmitting the data from a personal or mainframe computer through a modem.

To ensure consideration for 1997–98 funds, an institution must submit an electronic FISAP by data diskette, tape, or modem, as well as one original completed FISAP signature page and one original signed ''compliance certifications'' form by October 1, 1996.

ADDRESSES: *FISAP Delivered by Mail.* A diskette or tape containing FISAP data along with one original completed FISAP signature page and one original signed ''compliance certifications'' form must be addressed to FISAP, c/o Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland 20910.

An institution must show proof of mailing its FISAP and the required signed documents by October 1, 1996. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a FISAP and the required signed documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

FISAP Delivered by Hand. A diskette or tape containing FISAP data along with one original completed FISAP signature page and one original signed ''compliance certifications'' form must be taken to Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland.

Hand-delivered FISAP diskettes or tapes and the required signed documents will be accepted between 9 a.m. and 5 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. A FISAP and the required signed documents that are hand-delivered will not be accepted after 5 p.m. on October 1, 1996.

FISAP Delivered Electronically. A FISAP that is delivered electronically must be transmitted by either a personal or mainframe computer to the host Department computer using a modem. If you are transmitting electronically via a modem, the data transmission must be completed prior to midnight, Eastern time, on October 1, 1996. (For purposes of this notice, this deadline means that an institution has all of October 1, 1996, to transmit electronically via a modem.) The institution should print a copy of its transmission receipt for its records. In addition, one original completed FISAP signature page and one original signed ''compliance certifications'' form must be mailed to Electronic FISAP, c/o Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland 20910, by October 1, 1996. An institution must show proof of mailing the required signed documents by the deadline. Proof of mailing is explained under the heading ''FISAP Delivered by Mail.''

SUPPLEMENTARY INFORMATION: FISAP materials are mailed by the Department in late July 1996. An institution must prepare and submit its FISAP in accordance with the information included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any

paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations

The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Perkins Loan Program, 34 CFR Part 674.

(3) Federal Work-Study Programs, 34 CFR Part 675.

(4) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(6) New Restrictions on Lobbying, 34 CFR Part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(8) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: To receive information or to request FISAP materials, contact Ms. Sandra Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4714, ROB–3), Washington, D.C. 20202–5458. Telephone (202) 708–9751. 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.

(Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

Dated: July 11, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Numbers: 84.038 Federal Perkins Loan Program; 84.033 Federal Work-Study Program; and 84.007 Federal Supplemental Educational Opportunity Grant Program)

[FR Doc. 96–18177 Filed 7–17–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96–3–24–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 12, 1996.

Take notice that on July 5, 1996, Equitrans, L.P. (Equitrans) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 10
Third Revised Sheet No. 305

These tariff sheets were filed with a proposed effective date of August 1, 1996 pursuant to Section 31.3, Transportation Fuel and Loss Retention Adjustment, contained in the General Term and Conditions of Equitrans' FERC Gas Tariff, First Revised Revised Volume No. 1.

Equitrans states that by this filing, it proposes to make effective, beginning August 1, 1995, a revised transportation retainage factor designed to retain in-kind the projected quantities of gas required for the operation of Equitrans's system in providing service to its customers. Equitrans is proposing by this filing to reduce its Retainage Factor applicable to its transportation rate schedules to 3.85%.

Any persons desiring to be heard or protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 96–18208 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–244–001]

Koch Gateway Pipeline Company; Notice of Filing

July 12, 1996.

Take notice that on July 8, 1996, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing to become part of its revised tariff sheets, to be effective June 22, 1996:

Substitute First Revised Sheet No. 3702
Substitute Third Revised Sheet No. 3703

Koch Gateway states that these revised tariff sheets are filed to comply with the Commission's ''Order Accepting Tariff Sheets Subject to Condition'' issued June 21, 1996 in Docket No. RP96–244–000. As directed, Koch revised the tariff sheets to allow current customers and winning bidders thirty days to execute service agreements.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18215 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–310–000]

Louisiana-Nevada Transit Company; Notice of Proposed Changes in FERC Gas Tariff

July 12, 1996.

Take notice that on July 9, 1996, Louisiana-Nevada Transit Company (LNT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective August 8, 1996:

Title Page
First Revised Sheet No. 4

LNT states that the proposed changes would increase revenues from jurisdictional service by $494,789 based upon the 12-month period ending March 31, 1996, as adjusted.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.314 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18216 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–184–002]

Natural Gas Pipeline Company of America; Notice of Technical Conference

July 12, 1996.

The Commission's order on rehearing issued July 2, 1996 in this proceeding (76 FERC ¶ 61,013 (1996)), established a technical conference to explore certain issues raised by the parties.

Take notice that the technical conference has been scheduled for Tuesday, July 30, 1996, at 10:00 a.m. The conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, DC 20426. All interested persons and Staff may attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18214 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–628–000]

Northern National Gas Company; Notice of Request Under Blanket Authorization

July 12, 1996.

Take notice that on July 8, 1996, Northern Natural Gas Company (Northern), 111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–628–000, a request pursuant to Sections 157.205 and 157.212 (18 CFR Sections 157.205 and 157.212) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to upgrade the Black River Falls #4 town border station (TBS), an existing delivery point located in Jackson County, Wisconsin, to accommodate increased natural gas deliveries to Wisconsin Gas Company (Wisconsin Gas), under Northern's authorization in Docket No. CP82–401–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade an existing delivery point in Michigan to accommodate increased natural gas deliveries to Wisconsin Gas under Northern's currently effective throughput service agreements. Northern asserts that Wisconsin Gas has requested increased service at the Black River Falls #4 TBS to accommodate growth in the area.

It is asserted that the proposed increase in volumes to be delivered to Wisconsin at the Black River Falls #4 TBS are 723 MMBtu on a peak day and 61,514 MMBtu on an annual basis. Northern has stated that the estimated cost of upgrading the delivery point is $79,600 and that the facilities would be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18211 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–285–001]

Paiute Pipeline Company; Notice of Request for Amendment to Certificate of Public Convenience and Necessary

July 12, 1996.

Take notice that on July 1, 1996, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP95–285–001, pursuant to Section 7 of the Natural Gas Act and part 157 of the Commission's Regulations, a request to amend the certificate of public convenience and necessity issued to Paiute in Docket No. CP95–285–000 by order issued August 31, 1995 (Order).[1] By its request for amendment, Paiute requests authorization to forgo the relocation of its existing 360 horsepower reciprocating compressor located on Paiute's Elko Lateral in Elko County, Nevada (Elko Compressor Station).

Paiute states that the Commission, by its Order, issued a certificate of public convenience and necessity authorizing Paiute to:

(1) Install a 1,339 horsepower turbine-driven compressor at milepost 61.45 on the Elko Lateral in Lander County, Nevada (Battle Mountain Compressor Station); and

(2) Relocate the Elko Compressor Station from milepost 137.2 on the Elko Lateral to milepost 110.1 in Eureka County, Nevada.

Paiute states that the purpose of the compressor station construction project is to increase Paiute's capacity on the Elko Lateral by 1,496 Dth/d to provide additional delivery point flexibility to Southwest Gas Corporation-Northern Nevada (Southwest-Northern Nevada). Paiute further states that it is presently constructing the Battle Mountain Compressor Station facilities, and expects to complete and place into service those facilities on or before October 1, 1996.

Paiute indicates that recent system reinforcements by Southwest-Northern Nevada immediately downstream of the Elko Compressor Station have removed the need for Paiute to relocate the compressor station. As a result of Southwest-Northern Nevada's system reinforcements, Paiute has determined that it can provide the required additional delivery capacity to Southwest-Northern Nevada on the Elko Lateral by installing the Battle Mountain Compressor Station and leaving the Elko Compressor Station at its present location.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

[1] 72 FERC ¶ 61,193 (1995).

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the application should be approved. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Paiute to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18206 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–627–000]

Questar Pipeline Company; Notice of Application

July 12, 1996.

Take notice that on July 8, 1996, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP96–627–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to increase the Maximum Authorized Operating Pressure (MAOP) on its Main Lines (M.L.) Nos. 1 and 13 between the Eakin Compressor Station and the Coalville Compressor Station and to restage the Eakin No. 5 compressor, all as more fully set forth in the application on file with the Commission and open to public inspection.

Questar proposes to increase the MAOP from 700 psig to 860 psig following replacement of the pipelines under Section 2.55 of the Commission's Regulations. Questar proposes to restage the compressor in order to more fully utilize the increased capacity resulting from the increase in MAOP. It is asserted that the proposals would result in an increase in firm capacity of 20,000 dt equivalent of natural gas for Salt Lake City and other metropolitan areas along the Wasatch Front. It is estimated that the cost of the restage would be $184,000, with an additional $310,000 for a gas cooler to be installed under Section 2.55 authorization. It is stated that there would be no cost associated with the increase in MAOP.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advise, it will be necessary for Questar to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18210 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–72–000]

Viking Gas Transmission Company, Notice of GRI Refunds

July 12, 1996.

Take notice that on July 10, 1996, Viking Gas Transmission Company (Viking) tendered for filing a report of Gas Research Institute (GRI) refunds to Viking for the period from January 1, 1995 to December 31, 1995.

Viking states that the refunds have been based on a total refund from GRI to Viking of $146,639.00, and have been allocated among Viking's firm shippers based on their relative contributions to GRI funding during 1995. Viking also states that the reported refunds will be credited to Viking's customers on July 1996 invoices.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 19, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18212 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2300–000, et al.]

Arizona Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

July 11, 1996.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER96–2300–000]

Take notice that on July 2, 1996, Arizona Public Service Company (APS), tendered for filing the proposed Electric Power Service Agreement between APS and the Colorado River Commission of Nevada (CRC).

This Agreement provides for the flexibility to negotiate changes which would not exceed a maximum cost based rate as set forth in the Agreement.

A copy of this filing has been served on CRC and the Arizona Corporation Commission.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER96–2301–000]

Take notice that on July 2, 1996, Arizona Public Service Company (APS), tendered for filing amended cost information to update APS FERC Electric Tariff, Original Volume No. 1 (Tariff). This Amendment revises the ceiling rates applied to the Service Schedules in the Tariff, Service Schedule A—Coordination Power and Energy, Service Schedule B—Power and Energy Exchanges.

A copy of this filing has been served on all parties on the Service List and the Arizona Corporation Commission.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER96–2302–000]

Take notice that on July 2, 1996, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Calpine Power Services for transmission service under FPL's Transmission Tariff No. 2 and FPL's Transmission Tariff No. 3.

FPL requests that the proposed service agreements be permitted to become effective on July 2, 1996, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Power Providers Inc.

[Docket No. ER96–2303–000]

Take notice that on July 2, 1996, Power Providers Inc., tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective the earlier of August 30, 1996, or the date of a Commission order granting approval of this Rate Schedule.

Power Providers, Inc. intends to engage in electric power and energy transactions as a marketer and broker. In transactions where Power Providers Inc. purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, Power Providers Inc. will be functioning as a marketer. In Power Providers Inc.'s marketing transactions, Power Providers Inc. proposes to charge rates mutually agreed upon by the parties. In transactions where Power Providers Inc. does not take title to the electric power and/or energy, Power Providers Inc. will be limited to the role of a broker and will charge a fee for its services. Power Providers Inc. is not in the business of producing or transmitting electric power. Power Providers Inc. does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER96–2304–000]

Take notice that on July 2, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Virginia Power.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Kentucky Utilities Company

[Docket No. ER96–2305–000]

Take notice that on July 2, 1996, Kentucky Utilities Company (KU), tendered for filing a service agreement between KU and Aquila Power Corporation under its Transmission Services (TS) Tariff. KU requests an effective date of June 18, 1996.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER96–2306–000]

Take notice that on July 2, 1996, Montaup Electric Company (Montaup) filed 1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. III; and 2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. IV. The service agreements under both tariffs are between Montaup and following companies (Buyers):

1. Northern Utilities Company (NU)
2. LG&E Power Marketing, Inc. (LG&E)
3. Green Mountain Power Corporation (GMP)
4. USGen Power Services, L.P. (USGen)
5. Sonat Power Marketing, Inc. (Sonat)

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of July 2, 1996. No transactions have occurred under any of the agreements.

Montaup has existing service agreements with NU and GMP which were filed by Montaup in Docket No. ER92–91–000. Since these agreements will be replaced by new tariff service agreements, notices of cancellation were also tendered for filing on July 2, 1996. Montaup requests that the notices be allowed to become effective at the same time as the service agreements.

Montaup has been informed by Boston Edison that Boston Edison no longer desires any service under a service agreement between them. A notice of cancellation of that service agreement was therefore also tendered for filing. Montaup requests that the notice become effective on September 2, 1996.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER96–2308–000]

Take notice that on July 3, 1996, Florida Power Corporation (FPC), tendered for filing Amendment No. 1 to its contract for the provision of interchange service between itself and Kissimmee Utility Authority, formerly known as the City of Kissimmee. The amendment provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective as a rate schedule on July 5, 1996. Waiver is appropriate because it will allow voluntary economic transactions to move forward.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER96–2309–000]

Take notice that on July 3, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to PECO Energy Company (PECO) pursuant to its open access transmission tariff (the T–4 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on July 5, 1996.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Electric and Gas Company

[Docket No. ER96–2310–000]

Take notice that on July 2, 1996, Public Service Electric and Gas

Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Louisville Gas and Electric Company (LG&E), pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of July 1, 1996.

Copies of the filing have been served upon LG&E and the New Jersey Board of Public Utilities.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Indiana Public Service Company

[Docket No. ER96–2311–000]

Take notice that on July 3, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Delhi Energy Services, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Delhi Energy Services, Inc. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–399–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company, 71 FERC ¶ 61,014 (1996). Northern Indiana Public Service Company has requested waiver of the Commission's Regulations to allow the Transmission Service Agreement to become effective as of August 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER96–2312–000]

Take notice that on July 3, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-Term Power Sales Agreement dated June 14, 1996 (Agreement between PacifiCorp and Pacific Northwest Generating Cooperative (PNGC).

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of August 1, 1996 be assigned to the Agreement.

Copies of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2313–000]

Take notice that on July 3, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing Notices of Termination of Resale Electric Service Agreements for the cities of LeSueur and Olvia. Each of these cities tendered a Notice of Termination effective July 1, 1996 after which each cities' electrical requirements will be provided by the Minnesota Municipal Power Agency.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Graham County Electric Cooperative, Inc.

[Docket No. ER96–2314–000]

Take notice that on July 3, 1996, Graham Electric Cooperative, Inc. (GCEC), tendered for filing the following as original rate schedules:

Firm Power Wheeling Agreement Between Graham County Electric Cooperative, Inc. and City of Safford

Wholesale Power Supply and Transmission Service Agreement Between Graham County Electric Cooperative, Inc., and Town of Thatcher, Arizona, as Amended

Power Wheeling Agreement Among Graham County Electric Cooperative, Inc., Arizona Electric Power Cooperative, Inc., and the City of Thatcher, as Amended

GCEC requests waiver of the Commission's 60-day notice requirement.

Copies of this filing were served upon the City of Safford, the City of Thatcher, and the Arizona Corporation Commission.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER96–2315–000]

Take notice that on July 3, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and PanEnergy Power Services, Inc. (PanEnergy). This Service Agreement specifies that PanEnergy has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and PanEnergy to enter into separately scheduled transactions under which NMPC will sell to PanEnergy capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of July 1, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and PanEnergy.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER96–2316–000]

Take notice that on July 3, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Energy Resource Marketing, Inc. (ERM). This Service Agreement specifies that ERM has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and ERM to enter into separately scheduled transactions under which NMPC will sell to ERM capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of July 1, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and ERM.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER96–2317–000]

Take notice that on July 3, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL

and PanEnergy Power Services, Inc. FPL requests an effective date of July 5, 1996.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company

[Docket No. ER96–2318–000]

Take notice that on July 3, 1996, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and CNG Power Services Corporation. FPL requests an effective date of July 5, 1996.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. The Washington Water Power Company

[Docket No. ER96–2319–000]

Take notice that on July 3, 1996, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Notice of Termination concerning Rate Schedule FERC No. 109. On July 1, 1996, an agreement, between the Bonneville Power Administration (BPA), Washington Public Power Supply System (WPPSS) and WWP terminated by its own terms and conditions.

A copy of the filing was served upon BPA and WPPSS.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER96–2321–000]

Take notice that on July 5, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Rainbow Energy Marketing Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 24, 1996.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Illinois Power Company

[Docket No. ER96–2322–000]

Take notice that on July 25, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Illinois State University will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 24, 1996.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18217 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–1919–000]

Ensource; Notice of Issuance of Order

July 12, 1996.

Ensource (Ensource) submitted for filing a rate schedule under which Ensource will engage in wholesale electric power and energy transactions as a marketer. Ensource also requested waiver of various Commission regulations. In particular, Ensource requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Ensource.

On July 10, 1996, pursuant to delegated authority, the Director, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protect the blanket approval of issuances of securities or assumptions of liability by Ensource should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Ensource is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Ensource's issuance of security or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 9, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18209 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2487–003–NY and 11583–000–NY]

John M. Skorupski, Franklin Hydro, Inc.; Notice Establishing Subsequent Licensing Procedural Schedule and a Deadline for Submission of Final Amendments

July 12, 1996.

The license for the Hoosick Falls Hydro Project No. 2487, located on the Hoosic River, in Rensselaer County, New York, expired on December 31, 1993. The Commission issued a Notice Soliciting Applications on October 11, 1994, requiring that any interested entities file a notice of intent and that license applications be filed no later than 18 months from its notice of intent. Competing applications for subsequent license have been filed as follows:

Project No.	Applicant	Contact
P–2487–003	John M. Skorupski	John M. Skorupski, 71 River Road, Hoosick Falls, NY 12090, (518) 686–0062.

Project No.	Applicant	Contact
P–11583–000	Franklin Hydro, Inc	Frank O. Christie, 8 East Main Street, Malone, NY 12953, (518) 483–1945.

The following is an approximate procedural schedule that will be followed in processing the applications:

Date	Action
August 31, 1996.	Commission notifies applicant that its application is deficient, if applicable.
October 31, 1996.	*Commission's deadline for applicant to file final amendment, if any, to its application.*
November 14, 1996.	*Commission's deadline for applicants to serve a copy of its competing application on each of the other applicants per Section 4.36(d)(2)(ii) of the Commission's Regulations.*
November 30, 1996.	Commission notifies applicant that its application has been accepted, and issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
December 31, 1996.	*Commission's deadline for applicants to file a detailed and complete statement of how its plans are as well or better adapted than the plans of each of the other license applications to develop, conserve, and utilize in the public interest the water resources of the region, per Section 4.36(d)(2)(iii) of the Commission's Regulations.*
January 31, 1998.	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the applications, the Commission will evaluate the applications in accordance with applicable statutory requirements and take appropriate action on each application.

Any questions concerning this notice should be directed to Ed Lee at (202) 219–2809.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18213 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–386–001, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

July 11, 1996.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP96–386–001]

Take notice that on July 3, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25325–1273, filed in Docket No. CP96–386–001 pursuant to Rule 212 of the Commission's Rules of Practice and Procedure (18 CFR 385.212) a motion for acceptance of proposed firm and interruptible default contracts which will be used by Columbia Natural Resources, Inc. (CNR), in the event negotiated agreements cannot be reached between CNR and the gathering customers affected by the spin-down of gathering facilities proposed in these proceedings. Columbia's motion is on file with the Commission and open for public inspection.

Columbia states that because the proposed default contracts meet the Commission's criteria set forth in *Arkla Gathering Services Company*, 69 FERC ¶ 61,280 (1994), the Commission should approve the default contracts.

Comment date: August 1, 1996, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Carnegie Interstate Pipeline Company and Carnegie Production Company

[Docket No. CP96–612–000]

Take notice that on June 28, 1996, Carnegie Interstate Pipeline Company (CIPCO) and Carnegie Production Company (Carnegie Production) 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP96–612–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to permit CIPCO to abandon jurisdictional gas purchase contracts by transfer to Carnegie Production, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicants request that the Commission authorize CIPCO to abandon by transfer to Carnegie Production, all of the FERC jurisdictional contracts currently held by Carnegie Production and Marketing (CP&M), CIPCO's gas production and marketing division. Applicants state that Carnegie Production will engage in sales for resale of gas acquired pursuant to the transferred gas purchase contracts under a blanket marketing certificate subject to the terms and conditions set forth in Subpart L of Part 284 of the Commission's regulations. Applicants further state that upon the effective date of such transfers Carnegie Production will perform all the FERC jurisdictional sales services currently being performed by CP&M and CIPCO will request that the Commission delete its blanket certificate for unbundled sales service issued pursuant to Subpart J of Part 284 and CIPCO will file to remove from its tariff, Rate Schedules FMS and IMS, its merchant service.

Comment date: August 1, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. Koch Gateway Pipeline Company and Southern Natural Gas Company

[Docket No. CP96–619–000]

Take notice that on July 3, 1996, Koch Gateway Pipeline Company (Koch), P. O. Box 1478, Houston, Texas 77521–1478 and Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–619–000 an application pursuant to Section 7(b) of the Natural Gas Act and Section 157.18 of the Commission's regulations for an order permitting and approving abandonment of an exchange service. Koch and Southern state that this abandonment of service is in the public

interest and will have no effect on any existing customer, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 1, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP96–624–000]

Take notice that, on July 5, 1996, Colorado Interstate Gas Company (CIG), P. O. Box 1087, Colorado Springs, Colorado 80944, filed a request, pursuant to its blanket certificate in Docket No. CP83–21–000 (21 FERC ¶ 62,403) and Sections 157.205 and 157.212 of the Commission's Regulations, for authorization to construct new bi-directional delivery facilities so as to increase the capacity of its Fort Lupton Meter Station (a.k.a. the Fort Lupton delivery point) to 200,000 Dth per day, in order to provide increased deliverability to Public Service Company of Colorado (PSCo), all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

The Fort Lupton delivery point is located in Section 34, T2N, R66W, in Weld County, Colorado. CIG states that it has sufficient capacity to accomplish the increased deliveries without detriment or disadvantage to its other customers. CIG also states that the deliveries through the new Fort Lupton delivery point facilities will provide service to PSCo's Fort Vrain power plant and other loads in the area, and will enable PSCo to avoid the construction of approximately 50 miles of 20-inch pipeline to transport the gas it has stored in the Young Storage Field. CIG further estimates that the new facilities will cost approximately $68,000.

Comment date: August 26, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Algonquin Gas Transmission Company

[Docket No. CP96–625–000]

Take notice that on July 5, 1996, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP96–625–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate certain facilities in connection with establishing a new delivery point for Connecticut Natural Gas Corporation (Connecticut), under the blanket certificate issued in Docket No. CP87–317–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin states that Connecticut has requested and Algonquin has agreed to establish a new delivery point on land to be owned by Connecticut adjacent to Algonquin's existing pipeline facilities in the town of Hebron, Connecticut. Algonquin explains that it will construct a new measuring station and associated auxiliary facilities at a cost estimated to be $217,000; and that Connecticut will install approximately 4,400 feet of 6-inch steel main. In addition, Algonquin relates that Connecticut will pay all costs for the facilities installed and will construct all non-jurisdictional facilities downstream of those constructed by Algonquin. Algonquin says that the metering and certain auxiliary piping will be constructed, owned, operated, and maintained by Algonquin, while the meter station building, regulators, heaters, and other remaining facilities will be constructed, owned, operated and maintained by Connecticut. Algonquin states that it does not propose to increase the Maximum Daily Delivery obligation under firm service agreements between Algonquin and Connecticut. Algonquin relates that Connecticut has requested a transfer of 200 MMBtu per day under Rate Schedule AFT–1 (F–4) of its entitlement for firm service from an existing delivery point at Mansfield, Connecticut to the proposed Hebron delivery point. Algonquin states that its peak day or annual commitments under firm service agreements will not be adversely affected by construction of the new station.

Algonquin states that its existing tariff does not prohibit the addition of new delivery points. In addition, Algonquin states that it has sufficient capacity to accomplish the instant proposal without detriment or disadvantage to Algonquin's other firm customers.

Comment date: August 26, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18207 Filed 7–17–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5538–5]

Performance Evaluation Studies Supporting Administration of the Clean Water Act and Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting; invitation for public comment.

SUMMARY: By today's action, EPA invites public comment on and announces a public meeting to discuss options under consideration regarding the Agency's role in laboratory performance evaluation (PE) studies supporting administration of the Clean Water Act and Safe Drinking Water Act. EPA is reevaluating the federal role in the implementation of PE studies in light of current funding limitations, as well as the Agency's inability to create a dedicated fund for any fees collected under existing user fee authority. Based on the written comments received, as well as discussions at the public meeting, EPA intends to determine the appropriate federal role in the administration of PE studies supporting water programs. For further information contact Wendy Blake-Coleman by phone at 202–260–5680 or by facsimile at 202–260–7926.

DATES: EPA will conduct a public meeting on August 27, 1996 in Washington D.C. to obtain further input on the Agency's options for administering PE studies supporting water programs. The information obtained at the meeting, along with written comments, will be used to refine current options, determine whether other options should be considered, and decide which options should be eliminated from consideration. Registration for the meeting will begin at 8:30 AM. The meeting will be held from 9:00 AM to 4:00 PM. Meeting arrangements are being coordinated by DynCorp, Inc. To register contact Cindy Simbanin, DynCorp Inc., 300 N.Lee Street, Suite 500, Alexandria, Va. 22314. Cindy can be also be reached by phone at 703–519–1386 or by facsimile at 703–684–0610.

Written comments on today's notice must be received by no later than 60 days from publication to assure prompt consideration by the Agency. No facsimiles (faxes) will be accepted. People who want receipt of their comments acknowledged should include a self addressed, stamped envelop.

ADDRESSES: The public meeting will be held at the Jefferson Auditorium, United States Department of Agriculture (USDA), 14th and Independence Avenue SW., Washington DC 20250. The auditorium is in the USDA South Building Wing 4. Send written comments on today's notice and/or the public meeting to: PE Studies Docket Clerk, Water Docket (MC–4101), U.S. Environmental Protection Agency, Room M2616 401 M Street, SW., Washington, DC 20460. A copy of the comments are available for review at EPA's Water Docket at the above address. For access to the Docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment. Comments should be accompanied by any references cited in the comments. People commenting are also requested to provide an original and a copy of the written comments and enclosures.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic versions will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 60 days from publication. EPA is experimenting with electronic commenting, therefore people commenting may want to submit both the electronic comments and duplicate paper comments.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Blake-Coleman, Office of Water (4102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone Number: (202) 260–5680.

SUPPLEMENTARY INFORMATION: Since the 1970s, EPA has been conducting laboratory PE studies to support the various water programs administered by the States and EPA under the Clean Water Act and the Safe Drinking Water Act (water programs). Unfortunately, funding levels to support these PE programs has not remained consistent with the environmental monitoring requirements of the respective water programs. EPA's Office of Research and Development (ORD), the Office of Water (OW) and the Office of Enforcement and Compliance Assurance (OECA) are exploring alternative mechanisms to overcome funding shortfalls to better address the needs of State and federal water programs.

Although laboratory participation in the Agency's PE studies has been free of charge, recent resource limitations have caused the Agency to restrict participation to those laboratories nominated by State and EPA Regional offices. The Agency believes that the continued viability of these studies may depend upon the transfer of costs to the user community so that the PE program supply can meet demand. Because the Agency lacks authority under the Independent Offices Appropriations Act, 31 U.S.C. § 9701, to create a dedicated fund to support PE studies through a user participation fee, EPA has been exploring alternatives to assign some portion of the program to an organization with the ability to recover costs for a specified component of the PE studies program.

An EPA work group considered many options for assuring the continued viability of the PE studies program. The work group assessed several options that had a single provider manufacturing and distributing all the PE samples. A single provider rather than multiple providers has the major benefit of assuring that all study participants are treated exactly the same. EPA is such a single provider, and it's financial inability to continue this role was one of the reasons this effort was begun.

The work group initially believed that an ideal candidate for a single provider would (1) be an entity of the Federal government and (2) be capable of charging for PE samples. The National Institute of Standards and Technology (NIST) met these requirements. Accordingly, in-depth discussions were held with NIST personnel to determine whether it could take over this role from the EPA. After much consideration, NIST management decided that such a role was not compatible with the NIST mission and this scenario was eliminated as an option.

The remaining 8 options involve transferring all or some component of the PE study program to organizations other than EPA. A draft report, ''Externalization of EPA's Water Laboratory Performance Evaluation Programs,'' prepared by the EPA describes the options considered, the advantages and disadvantages of each, the estimates of costs to the Agency for each, and the estimates of time required to implement each option.

All of the options presented involve the use of a multiple PE study provider system: a partnership between the States, non-profit organizations and/or the private sector. Under this system, the multiple providers would conduct the PE studies according to established

standards in an effort to meet and better serve the needs of the PE programs(s), as well as reduce EPA costs and resources. Key criteria have been identified by the Agency to ensure national consistency, scientific integrity, and the appropriate quality of material to be prepared and distributed by multiple PE study providers. The draft report, ''EPA Requirements For National Consistency Among Multiple PE Study Providers,'' identifies these criteria and their rationale. This draft report is contained in Appendix A of the draft report, ''Externalization of EPA's Water Laboratory Performance Evaluation Programs.''

To obtain a copy of the document, call the Water Resource Center at 260–4786 or write the Office of Water Resource Center (RC4100), U.S. EPA, 401 M Street SW, Washington DC 20460. A single copy of the document can be picked up at the Water Resource Center in room M2615 Monday through Friday between 8:30 a.m. and 5 p.m. The document has also been placed on the Internet for public review and downloading at the following location: gopher.epa.gov.

I. Background of EPA-Supported PE Studies

The EPA-supported PE studies involve preparation of solutions of known concentrations of analytes of environmental concern, sending the samples to participating laboratories for analysis, and scoring the results against statistically-based or empirically-based performance criteria to determine whether the laboratory has demonstrated acceptable performance. PE studies are a valuable indicator of a laboratory's competency to analyze water samples. The PE studies also serve as one component of the overall federal program to assure quality in environmental measurement to implement the Clean Water Act and the Safe Drinking Water Act.

In total, EPA conducts three PE study programs to support nationwide implementation of water programs:

Water Supply (WS) study program, which includes chemistry, microbiology, and radiochemistry PE studies, supports implementation of the Safe Drinking Water Act. Under the Safe Drinking Water Act, laboratory certification programs are administered primarily by States (although, in limited instances, by EPA). Many State drinking water laboratory certification programs rely on EPA's Water Supply (WS) PE study program to provide a critical element for laboratory certification.

Water Pollution (WP) study program, which includes chemistry PE studies, tests laboratories' abilities to analyze for common surface water quality pollutant parameters and supports 25 to 30 State wastewater and other environmental laboratory certification programs. Many States conduct laboratory accreditation programs in support of the National Pollutant Discharge Elimination System (NPDES) permitting program under the Clean Water Act. Although participation in the WP is not federally compelled, many States require laboratories to participate in EPA's Water Pollution (WP) PE study program as a basis for accreditation under State laws.

Discharge Monitoring Report Quality Assurance (DMRQA) study program, which includes inorganic chemistry and whole effluent toxicity (WET) PE studies, is used as one tool for ensuring the quality of monitoring data submitted by National Pollutant Discharge Elimination System (NPDES) permittees. Regions and States use the results to identify laboratories that may need follow-up inspections. Historically, EPA administered the DMRQA studies through NPDES ''major'' permittees, who would transmit the DMRQA test samples to the laboratories who conducted compliance monitoring for such permittees. Starting in FY 1996, the DMRQA program is structured slightly differently. Now, the NPDES permittee instructs the laboratory that conducts compliance monitoring for the permittee to request the samples they need from the EPA. EPA, in turn, sends PE samples directly to the identified laboratory. NPDES permittees are required to participate in the DMRQA study under the authority of Clean Water Act section 308. Thus, though laboratories are not directly required to participate, participation is effectively or indirectly required by market forces.

In the event EPA decides not to externalize the Water PE Study Program, changes may continue to be made in the operation and design to improve the integrity of the program, fill in gaps, and reduce costs.

II. Development of Program Options and Definition of Terms

In reviewing the administration of existing EPA PE study programs and developing various options for future administration, the Agency defined its terms to identify the various roles of actors in the implementation of the programs. Currently, the primary actors in PE studies include EPA, permittees and laboratories, and in many instances, participating States. EPA currently oversees contractor preparation and distribution of samples directly to the laboratories. Results are returned to EPA, either directly by the laboratory, or, for DMRQA, by the permittee. For the purpose of evaluating different options to transfer portions of the PE Study programs to other entities, the Agency identified the various components of the PE Study program and the different roles currently played by EPA. The definitions below identify different components and roles that might be transferred to an entity other than EPA. In defining these terms, the Agency has made certain assumptions about the different components that might be transferred to other entities. Those assumptions are also explained.

a. Environmental Testing Laboratories: Any public or private sector laboratory that participates in approved laboratory performance evaluation programs in order to: Obtain or maintain certification/accreditation under EPA or State water programs, meet DMRQA requirements, or fulfill internal quality assurance or training requirements.

b. PE Study Providers: Organizations that supply PE study samples to environmental testing laboratories.

c. PE Study Provider Accreditation Body: Organization authorized to evaluate PE Study Providers using national standards and to accredit those PE Study Providers that meet the standards.

d. Standards Setting Authority: Organization responsible for determining the operation of the particular national water program (concerned with laboratory capacity), for setting the national standards for water PE studies and establishing national standards applicable to PE Study Providers.

e. National Standards for Water PE Studies: Nationally-applicable standards which establishes for the Water PE studies:

—Analytes to be included in each of the studies;
—Concentration ranges for each analyte in the PE samples for each type of study; and
—Scoring/evaluation criteria to be used in evaluating the data to determine acceptable performance

Ideally, national standards for Water PE Studies would be reviewed and published periodically (at least annually) and would incorporate the specific regulatory and non-regulatory requirements of the water programs. Depending on the administration option selected, such standards might be published in the Federal Register as a notice, or as a guidance document, or both. If the administration option selected involves EPA in standard setting, EPA would attempt to use

technical standards developed or adopted by voluntary consensus standards bodies, consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, section 12(d), 110 Stat. 783 (to be codified at 15 U.S.C. 272 note).

f. National Standards for Accreditation of Water PE Study Providers: Technical performance standards that establish the minimum level of performance to be achieved by a PE Study Provider as a condition of accreditation. Accreditation standards might include, at a minimum, technical standards for:

—Procedures necessary to ensure that each study is a fair and representative test;
—Adequacy of PE manufacturing facilities and equipment, including criteria describing adequate manufacturing and analytical testing components;
—Minimum required qualifications and experience of the personnel involved in all aspects of PE study design, manufacture, distribution, data evaluation, reporting, and data storage/retrieval;
—Adequacy of quality systems used by PE Study Suppliers to ensure the quality of PE studies; and
—Any other aspects of PE studies deemed necessary to ensure the consistency and quality of PE studies.

Ideally, national accreditation standards would be performance-based and would not reflect a highly prescriptive approach to PE study development and production. For example, accreditation standards might specify the components of an adequate quality system for PE study design, manufacture, and distribution. Accreditation standards might require that accredited PE Study Providers develop and maintain standard operating procedures for the various aspects of their processes, but would not specify the exact procedures to be used.

National accreditation standards might be published in the Federal Register, as a guidance document, or both. Such standards would be reviewed and revised periodically, as deemed necessary by the Standard Setting Authority. If the administration option selected involves EPA in standard setting for accreditation, EPA would attempt to use technical standards developed or adopted by voluntary consensus standards bodies, consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, section 12(d), 110 Stat. 783 (to be codified at 15 U.S.C. 272 note).

g. Primary Reference Standards: Analyte-specific standards that could be developed, for example, by the National Institute for Standards and Technology (NIST), an organization within the U.S. Department of Commerce, and used by all accredited PE Study Providers to ensure the traceability of PE materials. Properly prepared PE materials would have analyte concentrations with true values that are directly traceable to the primary reference standards.

III. EPA Decision-Making Process: Role of Stakeholders

EPA recognizes that the Water PE Study program has important roles to play in other on-going Agency and external efforts related to environmental monitoring and quality assurance. In particular, efforts undertaken by EPA's Environmental Monitoring Management Council (EMMC) regarding the establishment of a performance-based system for analytical methods, national environmental laboratory accreditation, and integration of EPA's analytical methods all relate to the water PE study program. Consequently, EPA has and will continue to coordinate its effort to re-configure the water PE study program with these other related activities to minimize duplication of efforts and to ensure that the outcomes of these efforts reflect consistent monitoring policy nationwide.

EPA also recognizes the need to coordinate this effort with external stakeholders. Of key importance is the EPA-sponsored National Environmental Laboratory Accreditation Conference (NELAC), a voluntary association of State and Federal Officials that also includes private sector membership in a nonvoting role. The purpose of NELAC is to promote environmental laboratory data of known quality through national consensus performance standards for environmental laboratories to be consistently implemented by State and federal accrediting authorities nationwide.

One component of the NELAC national program will be a self-supporting proficiency testing program that would address all fields of environmental testing, including drinking water and wastewater. One goal of the Water Laboratory PE Study externalization effort is to design a system that is amenable to incorporation into the NELAC national environmental laboratory accreditation program. To this end, EPA is soliciting the input of the NELAC Proficiency Testing Committee, Board of Directors, and the Agency FACA Committee, known as the Environmental Laboratory Advisory Board, on options for the Water Laboratory PE Program.

Working with external stakeholders such as the States, NPDES permit holders, drinking water suppliers, private laboratories, PE study providers, and State and National trade associations about changes to the Water laboratory PE Study program will be key in the decision making process. In addition, to the public meeting EPA is convening this August, EPA intends to pursue additional outreach efforts with these stakeholders. The intent is to provide all stakeholders an opportunity to discuss the options under consideration and mutually determine the best way to address any concerns prior to an Agency decision on a preferred option.

IV. PE Study Management Options

In developing options for consideration, EPA envisioned that an efficient water PE study program would consist of three core functions: (1) national standard setting for PE studies, (2) designation (selection and/or approval) of organizations to manufacture PE materials and administer PE studies, and (3) actual production and administration of the PE studies. Each of the options considered by EPA reflect permutations of these three core functions—variations on which organization(s) or type of organization(s) would fulfill the three functions.

Using these core functions, the EPA developed 8 different options for consideration. These 8 options reflect a range of possibilities. The options, however, are not exhaustive. The options do, however, represent the range of reasonable options available to EPA.

The 8 options considered by the Work Group are summarized below and in Table 1.

Option 1: EPA Oversees PE Study Providers

EPA would serve both as the Standards Setting Authority and as the PE Study Provider Accreditation Body. EPA would establish the national standards and standards for accrediting PE Study Providers. Accreditation standards would be based on current regulations, policies, and practices applicable to the WS, WP, and DMRQA studies. EPA would also determine when PE Study providers comply with the national PE study provider standards, and conduct periodic compliance monitoring activities (such as on-site audits and proficiency testing through ampule verification). EPA would publish a list of PE Study

Providers meeting such standards periodically (presumably, at least annually).

EPA would continue to maintain a national data base. The purpose of the national database would be to enable EPA (and States) to evaluate performance of the PE Study Providers, laboratory performance, and method effectiveness and make changes as necessary.

Private sector entities and/or interested States would assume the responsibility for conducting water PE studies. The PE Study Providers would: produce the PE materials (including PE samples); distribute the PE studies to participating laboratories; analyze client lab measurement data; determine acceptance limits according to procedures established by EPA; and report results (in the appropriate format and detail) to the participating laboratories, the organization accrediting the laboratory (or otherwise requiring laboratory participation), and to EPA. The report to EPA would provide a summary of variation among participating laboratories and how they have performed relative to EPA's performance criteria.

Laboratories desiring to participate in PE studies following EPA standards would use a PE study provider from a list developed by EPA. The laboratories would pay a participation fee to their PE study provider.

Option 2: NIST Oversees PE Study Providers

EPA would be the Standards Setting Authority for the Water PE Study program. EPA would work with NIST to establish the operational and technical standards to be used for accrediting private sector and State PE Study Providers. NIST would be responsible for publishing the accreditation standards. Both standards setting functions would be closely coordinated with NELAC. NIST would also develop primary reference standards which would be distributed to accredited PE Study Providers. NIST's National Voluntary Laboratory Accreditation Program would serve as the PE Study Provider Accreditation Body. NIST would oversee compliance with the national standards through periodic (presumably annual) on-site audits and validation of the quality of PE studies developed by the private sector and States. NIST would collect a fee from participating PE Study Providers to recover costs associated with the NIST accreditation program.

TABLE 1. ROLES AND RESPONSIBILITIES UNDER OPTIONS FOR EXTERNALIZATION OF PE PROGRAM

Option Number	Standards setting authority	PE study provider accreditation body	PE study provider*
Option 1: EPA Oversees PE Study Providers.	EPA would set national standards and standards for accreditation of PE Study Providers based on the current program.	EPA would accredit one or more companies and states to provide PE studies and would closely monitor the quality of the studies. EPA would review PE data and issue PE reports..	Private sector organizations and States would manufacture and distribute PE studies.
Option 2: NIST Oversees PE Study Providers.	EPA would set national standards for the water PE studies.	NIST would serve as the Accreditation Body and maintain the national data base..	Private sector organizations and states would manufacture and distribute PE materials.
Option 3: States Oversee Private Sector PE Study Providers.	EPA would act as the Standards Setting Authority and would oversee state PE Study Provider accreditation programs. EPA would also design and maintain the national data base.	State governments would serve as the accrediting bodies..	Private sector organizations and states would manufacturer and distribute PE studies.
Option 4: Private Sector Third Party Oversees PE Study Providers.	EPA would set national standards and standards for accreditation. EPA would also oversee the accreditation bodies.	Government or private sector organizations with expertise in accreditation would serve as Accreditation Bodies..	Private sector organizations and states would manufacture and conduct PE studies.
Option 5: EPA-Designated Third Party Oversees National Program.	Third party non-profit organization (e.g., NSF, A2LA, ANSI, ELAP) would be responsible for setting standards and operating the program.	Third party, non-profit organization would accredit suppliers and monitor PE material production to ensure that operational and quality standards are met.	Private sector organizations and states would manufacture and distribute PE materials, collect and compile PE data.
Option 6: No EPA Involvement in Water PE Studies.	EPA would develop and publish national standards.	None required, but the states, third party organizations, and the private sector could establish an oversight program.	Private sector organizations and states would manufacture and conduct PE studies.
Option 7: No National Accreditation/Oversight of PE Study Providers.	EPA would serve as the Standard Setting Authority and would establish guidance that includes national standards for PE studies and performance standards for PE Study Providers..	None.	Private sector organizations and states would manufacture and conduct PE studies in accordance with EPA guidance.
Option 8: EPA Oversight of One or More Government or Non-profit PE Study Providers.	EPA would set national standards and would also oversee the PE Study Provider accreditation bodies.	EPA would accredit PE Study Providers.	Non-profit organizations and states would manufacture and conduct PE studies.

*Under all options it is assumed that providers would collect PE data, conduct statistical treatments, compile reports and distribute them to the appropriate States and EPA.

NIST would maintain a national data base, accessible to EPA staff which would enable NIST and EPA to evaluate PE Study Providers' performance, laboratory performance, and method effectiveness.

The private sector and interested States would assume responsibility for conducting Water PE Studies. The PE Study Providers would: produce the PE materials; distribute the PE studies to participating laboratories; analyze client lab measurement data; determine acceptance limits according to procedures established by EPA; and report results (in the appropriate format and detail) to the participating laboratories, the organization accrediting the laboratory (or otherwise requiring laboratory participation), and to NIST. The report to NIST would provide a summary of variation among laboratories and how laboratories performed relative to EPA performance criteria. The PE Study Providers would prepare and characterize each batch of samples within a given study according to standardized protocols to determine the ''true concentration value'' of an analyte in the sample (e.g., consistent with NIST-provided primary reference standards). PE Study Providers would pay a fee to NIST for accreditation.

Laboratories desiring to participate in the Water PE Studies employing EPA/NIST standards might be required to pay a participation fee to the private sector or State PE Study Providers.

Option 3: States Oversee Private Sector PE Study Providers

EPA would serve as the Standards Setting Authority for the Water PE Study program and would maintain the national data base. EPA would design and implement a program to assure an appropriate level of consistency among State PE Study Provider accreditation programs.

Participating States would serve as PE Study Provider Accreditation Bodies. States would establish individual programs for accreditation of private sector PE Study Providers, individually or collectively through NELAC. The States would each determine the PE Study Providers authorized to distribute materials within their States. The States would also oversee compliance with the national standards through periodic on-site audits and ampule verification programs. Alternatively, any State could choose to serve as the PE Study Provider for all laboratories that it certifies or accredits (No State would be required to participate in any such program).

The private sector and interested States would conduct the Water PE Studies. The PE Study Providers would produce the PE materials; distribute the PE studies to participating laboratories; analyze client lab measurement data; determine acceptance limits according to procedures established by EPA; and report results (in the appropriate format and detail) to the participating laboratories and EPA. Depending on applicable state law, the participating State might charge PE Study Providers for accreditation.

Environmental testing laboratories would use any PE Study Provider approved by the State. Laboratories desiring to participate in the Water PE Studies might be required to pay a participation fee to the private sector or State PE Study Providers.

Option 4: Private Sector Third Party Oversees PE Study Providers

EPA would serve as the Standards Setting Authority for the Water PE Studies. EPA would establish national standards; establish technical performance standards for accreditation of PE Study Providers; establish standards for selection of qualified accreditation bodies; and select and oversee PE Study Provider accreditation bodies. All of these functions would be closely coordinated with NELAC and could be transferred to NELAC when NELAC develops consensus water laboratory PE study standards. EPA would also maintain the national data base.

One or more third parties would serve as the Water PE Study Provider Accreditation Body. The Water PE Study Provider Accreditation Body(ies) would oversee compliance with the EPA standards through annual on-site audits and ampule verification programs. The Water PE Study Provider Accreditation Body(ies) would collect a fee from participating PE Study Providers to cover their accreditation and for ongoing reaccreditation costs.

The private sector and interested States would conduct the Water PE Studies. The PE Study providers would: produce the PE materials; distribute the PE studies to participating laboratories; analyze client lab measurement data; determine acceptance limits according to EPA-established procedures; and report results (in the appropriate format and detail) to the participating laboratories, the organization accrediting the laboratory (or otherwise requiring laboratory participation), and the PE Study Provider Accreditation Body. The report to the PE Study Provider Accreditation Body would provide a summary of variation among laboratories and how laboratories performed relative to EPA performance criteria.

Environmental Testing Laboratories would use any accredited PE Study Provider or the State, where States choose to be the PE Study provider. Laboratories desiring to participate in the Water PE Studies employing EPA Standards might have to pay a participation fee to the PE Study Provider.

Option 5: EPA–Designated Third Party Oversees National Program

This option is essentially a privatized program which would use a process similar to the Drinking Water Additives Program. See 53 FR 25586 (July 7, 1988).

EPA would establish competitive process for selecting an organization to act as a Standard Setting Authority; publish that competitive process to reach as many potential competitors as possible, for example, in the Commerce Business Daily or Federal Register; and encourage non-profit, third-party standard organizations to respond. EPA would grade the proposals and select the Standard Setting Authority.

The selected Standards Setting Authority would develop consensus industry standards for PE samples/studies. EPA would be a participant in this process. Current EPA standards and/or forthcoming NELAC draft standards may serve as the model for the industry to develop the consensus industry standards for PE samples/studies.

The Standards Setting Authority may also assume the role of the Water PE Study Provider Accreditation Body or may select/contract with other third party organizations to certify private sector and State PE study providers. The Water PE Study Provider Accreditation Body(ies) would oversee compliance with the consensus industry standards through periodic on-site audits and ampule verification. The Water PE Study Provider Accreditation Body or the Standards Setting Authority would maintain a national data base. The Water PE Study Provider Accreditation Body(ies) would collect a fee from participating PE Study Providers to recover the costs associated with accreditation and for ongoing reaccreditation costs.

The private sector and interested States would conduct the Water PE Studies. The PE Study providers would: produce the PE materials; distribute the PE studies to participating laboratories; analyze client lab measurement data; determine acceptance limits according to procedures established by the Standards Setting Authority; and report results (in the appropriate format and detail) to the participating laboratories, the organization accrediting the

laboratory (or otherwise requiring laboratory participation), and the PE Study Accrediting Body and/or the Standards Setting Authority. The report to the PE Study Provider Accreditation Body would provide a summary of how the laboratories have varied and how they have performed relative to the SSA's performance criteria.

Environmental testing laboratories would use any accredited PE Study Provider. Laboratories desiring to participate in the Water PE Studies might have to pay a participation fee to the PE Study Provider.

Option 6: No EPA Involvement in Water PE Studies

This option would represent complete disinvestment by EPA. EPA would notify the States and the public of its intention to discontinue the Water PE Studies and publish the national standards. On the preannounced date, EPA would discontinue its involvement in water PE Studies. EPA would no longer maintain a national data base.

States would arrange for their own PE Study programs, to the extent necessary to meet State needs, and manage those programs to meet State regulatory requirements. States would direct laboratories to one or more private sector or State PE Study Providers. The individual States would each decide who would: produce the PE materials; validate the PE Study materials; distribute the PE studies to participating laboratories; analyze client laboratory measurement data; determine acceptance limits in accordance with State-specified procedures; and report results. The individual States would determine their individual needs for a data base. The States might also organize and conduct a cooperative national program through NELAC.

Environmental testing laboratories would use PE Study Provider(s) authorized in the State where they do business. Laboratories might pay a participation fee directly to the State or PE Study Provider.

Option 7: No National Accreditation/ Oversight of PE Study Providers

EPA would serve as the Standard Setting Authority for the Water PE Study Program. EPA would publish the national standards and performance standards for PE Study Providers as non-binding federal guidance (which States may elect to adopt for regulatory purposes under State laws). EPA might maintain a national data base in order to monitor the effectiveness of PE studies. Any private sector company or State entity would be eligible to provide PE studies to participating environmental testing laboratories. The market place would police itself, i.e., the PE material suppliers (private sector companies) through trade associations, f28((^U*^U^^^S^I^The Certified Reference Material Manufacturing Association (CRMMA), could develop voluntary (non-regulatory) criteria and protocols for PE manufacturers who might participate for market-based purposes. Participating PE study laboratories and EPA Regional and State regulators—the ''Water PE Study customers''—would individually determine which PE study providers provided quality products that met their needs.

The private sector and/or interested States would assume responsibility for conducting Water PE Studies. The Water PE Study Providers would produce the PE materials; distribute the PE studies to participating laboratories; analyze client lab measurement data; determine acceptance limits according to EPA guidance; and report results (in the appropriate format and detail) to the participating laboratories, the organization accrediting or certifying the laboratory (or otherwise requiring laboratory participation), and to EPA. The report to EPA would provide true values of measured analytes, reported values of participating laboratories, and an evaluation of how the laboratories performed relative to EPA's performance criteria.

Laboratories desiring to participate in PE studies would purchase the appropriate PE samples from the PE study provider(s) acceptable to the applicable laboratory accreditation authority, declare to the applicable laboratory accreditation authority that the PE samples are for official evaluation, and pay a participation fee to a PE study provider.

Option 8: EPA Oversight of One or More Government or Non-profit PE Study Providers

EPA would serve as the Standards Setting Authority and as the PE Study Provider Accreditation Body. EPA would establish national standards; establish technical performance standards for PE Study Providers; design and implement an accreditation program for PE Study Providers (including on-site accredits and ampule verification studies); and accredit PE Study Providers. The universe of accredited Water PE Study providers would include only government (e.g., States) and other not-for-profit organizations. EPA would maintain the national data base. All of EPA's functions would be closely coordinated with NELAC and could be transferred to NELAC once NELAC develops consensus-based PE standards.

One or more governmental or not-for-profit entities would serve as the Water PE Study Providers. The Water PE Study providers would conduct the Water PE Studies. The PE Study Providers would produce the PE materials; distribute the PE studies to participating laboratories; analyze client lab measurement data; determine acceptance limits according to EPA procedures; and report results (in the appropriate format and detail) to the participating laboratories, the organization accrediting the laboratory (or otherwise requiring laboratory participation), and to EPA.

Environmental testing laboratories would acquire Water PE samples from authorized PE Study Provider(s). Laboratories might be required to pay a nominal participation fee to their PE Study Provider.

V. Option Selection Criteria

EPA intends to evaluate the Water PE Study implementation options against identified selection criteria. Thus far, EPA has identified seven selection criteria, explained below. The Agency invites public comment on these seven criteria, as well as any other selection criteria EPA should consider.

1. Cost to EPA: Each option would be evaluated with respect to its costs to EPA in terms of both personnel and costs. Options which costs less to government agencies would generally be preferred.

2. Impact on States and Ease of Implementation: Each option would be evaluated to determine the budgetary, statutory, regulatory, programmatic and other impacts that they would have on participating States. Options would be evaluated for the costs and problems the States might incur under each option. Options with substantial adverse impacts on the States would be not favored.

3. Implementation Timetable: Each option would be evaluated relative to how long it would take to be implemented. Options which can be implemented faster would be considered more favorably.

4. Legality of Option: Each option would be evaluated to determine whether EPA has the necessary authority to implement the option under existing legal authorities. Options which may require statutory amendment or enactment would generally be not favored (for the implementation timetables concerns identified in criterion 2 above).

5. National Consistency: Each option should be evaluated against the

following measures for the degree to which:

a. Participating laboratories are evaluated on similar bases and subjected to the same standards;

b. The probability of a laboratory ''passing'' a particular study is independent of the PE study supplier;

c. A common measure can be applied to all data received from participating laboratories regardless of PE study sample supplier;

d. To the extent applicable under the option considered, data from different PE study suppliers could be combined into a national data base; and

e. Water PE Samples used by the participating laboratories would be of equal ''challenge,'' irrespective of PE study supplier.

6. Quality of PE Studies: Each option would be evaluated relative to the ease with which the homogeneity, accuracy and stability of the samples can be monitored.

7. Cost of Program to Laboratory Community: Each option would be evaluated for its implementation cost to participating laboratories. Lower cost options would be favored. One ''cost'' that we have not been able to quantify—interstate reciprocity—would be important to EPA decision making. Any option that would require a laboratory desiring to do business in more than one State to participate in multiple PE studies (or bear higher participation fees) would be less favored compared to an option where the costs of multi-state operations are low.

VI. Cost Estimates for Participating Laboratories

EPA estimates that full participation in the chemistry and microbiological studies for either a WP or WS series program would cost between $800–$1400 per study. This does not include any costs that might be passed on as a result of instituting a PE Study Provider Accreditation Body Program. Some States may require full participation in two WP or WS studies per year to be accredited by the State. However, since most laboratories are not required to be accredited for all analytes covered in a study, the costs to participate in a given PE study could be as low as $100 per study for laboratories analyzing only conventional analytes such as Biological Oxygen Demand, PH, and Total Suspended Solids. No cost estimates are currently available for Water PE studies that assure laboratory capacity to measure radioactivity or whole effluent toxicity.

VII. Invitation for Public Comment

EPA has not concluded whether any of these options is feasible. So that EPA can assure that the views of all affected stakeholder groups on these options have been considered, the Agency requests that written comments identify if the person commenting represents: (a) A State or political subdivision of a State (city, county, etc.) or a non-federal governmental regulatory agency; (b) an independent third-party organization; (c) a private-sector PE study provider or reference material producer; (d) affected environmental analytical laboratory; or (e) regulated water discharger or drinking water supplier.

EPA invites comments on the following issues:

General comments

(1) How well does each option for the proposed structure for the Water PE Study Program meet your organizational needs relative to: (1) National standard setting for PE studies, (2) designation (selection and/or approval) of organizations to manufacture PE materials and administer PE studies, and (3) actual production and administration of the PE studies.

(2) How do the variations in each option on which organization(s) or type of organization(s) would fulfill the three functions accommodate the needs of your organization and what would be the favorable or unfavorable consequences of that variation?

Specific comments

Cost to EPA

(1) EPA intends that any portion of the PE study program not transferred to another organization would not be funded by Water PE study participants. What is the minimum role that EPA should retain in each of the three intended function areas (identified above) to assure a successful nationwide PE study program for laboratories analyzing aqueous samples?

Adverse Impact on States and Ease of Implementation

(2) What budgetary, statutory, regulatory, programmatic and other impacts would each of these options have on States?

(3) Are the estimated costs for States realistic? If not, what is a realistic estimated cost? What is the basis for your estimate.

Implementation Timetable

(4) In the selection process, each option will be evaluated relative to how soon it can be implemented. Are the time lines presented in the options paper realistic? If not, why?

(5) Are there other implementation time issues related to your involvement with the studies that need to be considered?

(6) Should the Water PE Studies be transferred from EPA all at once or should there be a phased transition during which EPA should address specific needs or shortcomings in the new process?

National Consistency and Interstate Reciprocity

(7) Most of the identified options would involve multiple private-sector study providers. How could EPA assure that the probability of a laboratory ''passing'' a particular PE study is independent of the PE study supplier?

(8) How could EPA assure that a common measure can be applied to all data regardless of study supplier?

(9) Should the data from different PE study suppliers be combined into a national data base? Why?

(10) How can EPA assure that the samples, irrespective of study supplier are of equal challenge?

(11) What are the interstate reciprocity issues that will arise from the options presented?

Quality of PE Studies

(12) How should EPA attempt to ensure there will be adequate safeguards to assure PE samples are homogeneous and stable?

(13) What recourse should a laboratory have if the laboratory ''fails'' a PE study due to factors outside the laboratory's control (e.g., because the study provider assigns an incorrect true value or distributes an unstable sample)?

Cost of Program to Laboratory Community

(13) Are the estimated costs for participating laboratories realistic? If no, what do you believe to be realistic estimated costs? Why? Will the fees have a significant impact on the way the person commenting conducts business in the future?

VIII. Agenda Topics for Public Meeting in Washington, DC

The Agency expects a wide variety of organizations to have an interest in whether and how the Agency should externalize all or part of the Water PE Study program. The purpose of the public meeting on the alternative funding options for the Water PE study programs is twofold: (1) To present the options with pros and cons of each; and (2) to hear balanced responses from

representatives from affected parties, including (a) State regulators, (b) independent third-party organizations, (c) private-sector PE study provider or reference material producers; (d) affected environmental analytical laboratories; or (e) regulated water dischargers or drinking water suppliers. Comments on the evaluation criteria and the accuracy of the estimated costs and timeliness for each option are of special interest. The first hour will be spent on presenting the options.

Attendees are invited to make a formal presentation on current options or offer alternative options. Fifteen minutes will be allotted for each presentation. Participants are asked to notify EPA of their intention to make a presentation by August 10, 1996 and submit a written summary no later than August 15, 1996. The intent is to distribute a package of presentations to all participants at the meeting. Please contact Cindy Simbanin at 703–519–1386 about your plan to make a presentation at the meeting. Send written presentations for the public meeting to: Cindy Simbanin, DynCorp Inc., 300 N. Lee Street, Suite 500, Alexandria, Va. 22314. Presentations can also be faxed to 703–684–0610.

Dated: July 5, 1996.

Steven Herman,

Assistant Administrator for Enforcement and Compliance Assurance.

Dated: July 3, 1996.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

Dated: July 3, 1996.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 96–18178 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5537–1]

Notice of Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as Amended, et seq., Osage Metals Superfund Site, Kansas City, Kansas

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement and covenant not to sue, Osage Metals Superfund Site, Kansas City, Kansas.

SUMMARY: Notice is hereby given that a proposed agreement and covenant not to sue regarding the Site at 120 Osage Avenue, Kansas City, Kansas, was signed by the United States Environmental Protection Agency (EPA) on May 7, 1996 and approved by the United States Department of Justice on May 24, 1996.

DATES: EPA will receive, until August 19, 1996, written comments relating to the proposed agreement and covenant not to sue.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to *the Osage Metals Superfund Site Agreement and Covenant Not to Sue.*

The proposed agreement and covenant not to sue may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101 (913) 551–7255. In requesting a copy please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction costs), payable to the United States Environmental Protection Agency.

SUPPLEMENTARY INFORMATION: The proposed agreement concerns the 1.7-acre Osage Metals Superfund Site (''Site''), located at 120 Osage Avenue in Kansas City, Kansas. The Site was the location of metals salvage and reclamation facilities between 1948 and 1993. Samples taken at the Site in 1994 found polychlorinated biphenyls (''PCBs'') in surface soils at levels as high as 334 mg/kg, and lead contamination in levels as high as 56,600 mg/kg. The EPA approved a removal action at the Site on February 13, 1995, and began cleanup in March of 1995. It completed its work in October of 1995. As of October 31, 1995, EPA had incurred costs in excess of $1.1 million exclusive of interest. On June 26, 1995, EPA perfected a CERCLA lien on the Site to secure its $1.1 million in response costs.

The Site owner and the Site operator, who are liable for the United States' response costs as owner and operator of the Site, have no valuable assets except for their personal residence, personal cars and the Site itself. Under the terms of a separate agreement, the owner has agreed to transfer title to the property (Site) to W.W. Land Company, L.L.C. (*U.S.* v. *Noreen Greenberg et al.*, Civil Action 96–2289–JWL).

Under the proposed agreement and covenant not to sue, the W.W. Land Company, L.L.C. will pay the United States $80,000 in exchange for a Covenant Not to Sue for Past Removal Costs and the release of the CERCLA lien now attached to the property. The W.W. Land Company, which had no part in the activities that gave rise to the United States' response costs of the Site, plans to build and operate a commercial warehouse on the Site.

Dated: July 2, 1996.

William Rice,

Acting Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 96–18043 Filed 7–17–96; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

[NV–96–27]

Policy Statement on Disaster Relief Efforts by Farm Credit Institutions

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: Section 5.17 of the Farm Credit Act of 1971, as amended (Act) provides the Farm Credit Administration (FCA) the authority to establish standards and guidelines appropriate for carrying out the purposes of the Act and to ensure the safety and soundness of the Farm Credit System (FCS) institutions. Pursuant to such authorities, the FCA Board has adopted a Board Policy Statement on Disaster Relief Efforts by Farm Credit Institutions. The FCA Board in its Board Policy Statement recognizes that natural and man-made disasters and their impact on a specific region of the country or specific segment of the agricultural community are occurrences that FCS institutions are required to respond to from time to time. The Board Policy Statement provides the general philosophy of the FCA with regard to disaster relief actions by FCS institutions. The Board Policy Statement also provides general direction on the principal objectives and safety and soundness concerns associated with any disaster relief actions undertaken by FCS institutions.

EFFECTIVE DATE: June 13, 1996.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4498;

or

Rebecca S. Orlich, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102–

5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement on disaster relief efforts by Farm Credit institutions is set forth below in its entirety:

Farm Credit Administration Board Policy Statement on Disaster Relief Efforts by Farm Credit Institutions

NV–96–27

FCA–PS–71

Effective Date: June 13, 1996.

Effect on Previous Action: Supersedes FCA Bookletter 368–OE, September 14, 1993.

Source of Authority: Section 5.17 of the Farm Credit Act of 1971, as amended.

The FCA board hereby adopts the following policy statement:

The Farm Credit Administration (FCA) recognizes that in the aftermath of hurricanes, floods, droughts, or other natural or man-made disasters, specific sections of the country or segments of the agricultural community are declared to be disaster areas. Such disaster area declarations may be made by the President of the United States, the Governor of a State, or a specific Federal or State government agency. When a disaster area includes a rural community where a Farm Credit institution is located or does business, the institution can be affected in two ways: directly, such as by physical damage to the institution itself or incapacitation of employees; or indirectly, such as by damage suffered by individuals and businesses with loans from the institution. In the interest of providing the highest quality and most efficient service to agricultural borrowers, the FCA encourages Farm Credit institutions operating in disaster-affected areas to work within their communities to help alleviate pressures on borrowers under stress.

When conducted in a reasonable and prudent manner, the efforts of Farm Credit institutions to work in the public's interest with borrowers in the disaster areas will be considered consistent with safe and sound business practices. It is the FCA's belief that the institutions have considerable flexibility under the existing regulations to provide appropriate disaster relief. Such relief efforts may include, but would not necessarily be limited to, extending the terms of loan repayment or restructuring a borrower's debt obligations. In addition, a Farm Credit institution may consider easing some loan documentation or credit-extension terms for new loans to certain borrowers or requesting the FCA to grant relief from specific regulatory requirements. It is the FCA's belief that the principal objectives of any disaster assistance program developed by a Farm Credit institution and approved by its board should be to:

1. Provide necessary and timely relief to disaster-affected customers of the institution;

2. Minimize the adverse effects of the disaster on the profitability, financial condition, operating efficiency, and morale of customers, as well as on the institution;

3. Review applicable statutory and regulatory requirements and determine whether requesting the FCA to provide exceptions from regulatory requirements would be appropriate; and

4. Promote, through such consideration and actions, the Farm Credit System's mandate to provide American farmers and ranchers with sound, adequate, and constructive credit and closely related services.

The FCA further believes that proper risk controls and management oversight should be exercised to ensure that such efforts serve the interests of the lending institution as well as those of the community. Any institution providing disaster relief should document such relief actions as well as any significant departures from otherwise applicable institution policies and procedures.

The aforementioned objectives and risk controls are conditions and characteristics on which the FCA will evaluate an institution's relief activities. These objectives and risk controls should be set forth in any request to the FCA for specific regulatory relief.

The FCA also recognizes that conditions related to a disaster may impair an institution's ability to comply in a timely way with regulatory reporting and publishing requirements. Farm Credit institutions should contact their FCA field office when relief from specific regulatory or reporting requirements is needed.

Additionally, the Board of Governors of the Federal Reserve System (Federal Reserve Board) has, from time to time, granted relief from certain Regulation Z requirements to consumers located in declared disaster areas. It is likely that the Federal Reserve Board will continue to promulgate similar temporary exceptions in disaster-affected areas. When this occurs, the FCA will, as a matter of convenience, continue to notify the Farm Credit institutions affected by Regulation Z exceptions.

Adopted this 13th day of June, 1996 by order of the Board.

Dated: July 12, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–18218 Filed 7–17–96; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, July 25, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1996–25: Stanley M. Brand on behalf of Seafarers Political Activity Donation (''SPAD'').
Advisory Opinion 1996–28: Richard W. Shaffer on behalf of the Lehigh Valley Citizens for Don Ritter.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 96–18436 Filed 7–16–96; 2:59 pm]

BILLING CODE 6715–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Financial Institutions Rating System

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is requesting comment on proposed changes to the Uniform Financial institutions Rating System (UFIRS), commonly referred to as the CAMEL rating system. The term ''financial institutions'' refers to those insured depository institutions whose primary Federal supervisory agency is represented on the FFIEC. The agencies comprising the FFIEC are the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Association (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

The proposed revisions update the rating system to reflect changes that have occurred in the financial services

industry and in supervisory policies and procedures since the rating system was first adopted in 1979. The proposed changes include: The reformatting and clarification of the existing component rating descriptions; the addition of a sixth rating component addressing sensitivity to market risks; an increase in emphasis on the quality of risk management processes in each of the rating components, particularly in the management component; the addition of language in composite rating definitions to parallel the proposed changes in component rating descriptions; and, the explicit identification of the risk types that are to be considered in assigning component ratings. After reviewing public comments, the FFIEC intends to make appropriate additional changes to the revised UFIRS and adopt a final rating system.

The FFIEC notes that some agency regulations currently use an institution's UFIRS or CAMEL rating in determining an institution's status under those regulations. The agencies may consider amending those regulations to incorporate any changes made to the UFIRS system.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Comments should be sent to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue NW., Suite 200, Washington, DC 20037, or by facsimile transmission to (202) 634–6556.

FOR FURTHER INFORMATION CONTACT:

OCC: Lawrence W. (Bill) Morris, National Bank Examiner, Office of Chief National Bank Examiner, (202) 874–5350, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

FRB: Kevin Bertsch, Supervisory Financial Analyst, (202) 452–5265, or Constance Powell, Supervisory Financial Analyst, (202) 452–3506, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: Daniel M. Gautsch, Examination Specialist, (202) 898–6912, Office of Policy, Division of Supervision. For legal issues, Linda L. Stamp, Counsel, (202) 898–7310, Supervision and Legislation Branch, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

OTS: William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background Information

The UFIRS is an internal supervisory rating system used by the Federal supervisory agencies for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special supervisory attention or concern. The UFIRS was adopted in 1979 and is commonly referred to as the CAMEL rating system. Under the UFIRS, each financial institution is assigned a composite rating based on an evaluation and rating of five essential components of an institution's financial condition and operations. These component factors address the adequacy of capital, the quality of assets, the capability of management, the quality and level of earnings, and the adequacy of liquidity. Both the composite and the component ratings are assigned on a 1 to 5 numerical scale. A 1 indicates the strongest performance and management practices, and the least degree of supervisory concern, while a 5 indicates the weakest performance and management practices and, therefore, the highest degree of supervisory concern.

The composite rating reflects an institution's overall financial condition, compliance with laws and regulations, and management capability. The composite ratings are used by the Federal supervisory agencies to monitor aggregate trends in the overall soundness of financial institutions.

The rating system also provides a means for the Federal supervisory agencies to monitor, for various statistical and supervisory purposes, the types and severity of problems that institutions may be experiencing. This monitoring is possible since the composite rating assigned under UFIRS is based on the ratings of several essential aspects of a financial institution's condition and operations. For example, liquidity is one of the aspects of an institution's operations that is assigned a component rating. Thus, UFIRS allows the Federal supervisory agencies to readily identify all institutions that are experiencing a liquidity problem, to gauge the severity of the problem, and to determine the level of supervisory concern that may be warranted.

UFIRS has proven to be an effective means for the Federal supervisory agencies to determine the safety and soundness of financial institutions. A number of changes, however, have occurred in the financial services industry and in supervisory policies and procedures since the rating system was first adopted. The FFIEC's Task Force on Supervision has reviewed the existing rating system in light of these industry trends. The Task Force has concluded that the current UFIRS framework continues to provide an effective vehicle for summarizing conclusions about the soundness of financial institutions. As a result, the FFIEC proposes to retain the basic rating framework, and the revised rating system will continue to assign a composite rating based on an evaluation and rating of essential components of an institution's financial condition and operations. However, the FFIEC proposes certain enhancements to the rating system.

Discussion of Proposed Changes to the Rating System

1. Structure and Format

The FFIEC proposes to enhance and clarify the component rating descriptions by reformatting each component into three distinct sections. These sections are: (a) An introductory paragraph discussing in general terms the areas to be considered when rating each component; (b) a bullet-style listing of the specific evaluation factors to be considered when assigning the component rating; and, (c) a brief qualitative description of the five rating grades that can be assigned to a particular component.

2. Component for Sensitivity to Market Risks

The FFIEC proposes to adopt a sixth rating component addressing sensitivity to market risks. This component would include interest rate risk, to which every institution is subject, price risk, and foreign exchange risk.

In recent years, financial institutions have increased their holdings of complicated on- and off-balance sheet instruments, such as structured notes and collateralized mortgaged obligations (CMOs), that are sensitive to changes in interest rates. In addition, the increase in competitive pressures has constrained, in some cases, institutions' abilities to advantageously price loans and deposits. Thus, there is a growing need for financial institutions to monitor and manage their interest rate risk, as well as for the Federal supervisory agencies to monitor the degree of this risk. In addition, for those institutions that have substantial trading

operations or large foreign positions, there is an increased susceptibility to price and foreign exchange risks that also must be closely monitored by the Federal supervisory agencies.

Under the current UFIRS, these market risks are considered within a number of components. For example, interest rate risk is considered when evaluating the earnings component since this risk can have a direct effect on future earnings. Interest rate risk is also considered when evaluating the liquidity component since interest rate risk is a factor of an institution's overall asset/liability management practices. Under the revised rating system, certain aspects of an institution's sensitivity to market risks would continue to be considered when evaluating these other components. However, the conclusions on an institution's sensitivity to interest rate, price, and foreign exchange risks would be summarized under the new component in recognition of the impact these risks can have on an institution's overall risk profile.

3. Risk Management

The FFIEC is proposing that the revised rating system reflect an increase in emphasis on risk management processes. The Federal supervisory agencies currently consider the quality of risk management processes in applying the UFIRS, particularly in the management component. Changes in the financial services industry, however, have broadened the range of financial products offered by institutions and accelerated the pace of transactions. These trends reinforce the importance of institutions having sound risk management processes. Accordingly, the revised rating system would contain language in each of the components emphasizing the consideration of processes of identify, measure, monitor, and control risks.

4. Composite Rating Definitions

The FFIEC is proposing changes in the composite rating definitions to parallel the changes in the component rating descriptions. Under the FFIEC's proposal, the revised composite rating definitions would contain an explicit reference to the quality of overall risk management practices. The basic context of the existing composite rating definitions is being retained. The composite rating would continue to be based on a careful evaluation of an institution's managerial, operational, financial, and compliance performance.

5. Identification of Risk Types

The FFIEC is proposing that the types of risks associated with each of the component ratings be explicitly identified. For example, the proposed rating description for asset quality notes that a primary consideration in assigning the component rating is an assessment of credit risk associated with loans, investments, other real estate owned, and certain off-balance sheet transactions. However, all other risks affecting the quality of assets, including, but not limited to, operational, market, reputation, strategic, and compliance risks, also would be considered.

Request for Comments

The FFIEC requests comment on the proposed changes to the rating system. In addition, the FFIEC invites comments on the following questions:

1. Does the proposed, revised rating system capture the essential aspects of a financial institution's condition, compliance with laws and regulations, and overall operating soundness? If not, what additional or different components should be considered?

2. Does the proposed management component rating adequately represent an assessment of the quality of the board of directors' and management's oversight regarding an institution's operating performance, risk management practices, and internal controls? If not, what other factors should be considered when rating management?

Proposed Text of the Uniform Financial Institutions Rating System

Uniform Financial Institutions [1] Rating System

Introduction

The Uniform Financial Institutions Rating System (UFIRS) was adopted by the Federal Financial Institutions Examination Council (FFIEC) on November 13, 1979. Over the years, the UFIRS has proven to be an effective internal supervisory tool for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special attention or concern. A number of changes, however, have occurred in the banking industry and in the Federal supervisory agencies' policies and procedures which have prompted a review and revision of the 1979 rating system. The revisions to UFIRS include the addition of a sixth component addressing sensitivity to market risks; the explicit reference to the quality of risk management processes in the management component; and the identification of risk elements within the composite and component rating descriptions.

The UFIRS takes into consideration certain financial, managerial, and compliance factors that are common to all institutions. Under this system, the supervisory agencies endeavor to ensure that all financial institutions are evaluated in a comprehensive and uniform manner, and that supervisory attention is appropriately focused on the financial institutions exhibiting financial and operational weaknesses or adverse trends.

The UFIRS also serves as a useful vehicle for identifying problem or deteriorating financial institutions, as well as for categorizing institutions with deficiencies in particular component areas. Further, the rating system assists Congress in following safety and soundness trends and in assessing the aggregate strength and soundness of the financial industry. As such, the UFIRS assists the agencies in fulfilling their collective mission of maintaining stability and public confidence in the nation's financial system.

Overview

Under the UFIRS, each financial institution is assigned a composite rating based on an evaluation and rating of six essential components of an institution's financial condition and operations. These component factors address the adequacy of capital, the quality of assets, the capability of management, the quality and level of earnings, the adequacy of liquidity, and the sensitivity to market risks.

Composite and component ratings are assigned based on a 1 to 5 numerical scale. A 1 indicates the highest rating, strongest performance and risk management practices, and least degree of supervisory concern, while a 5 indicates the lowest rating, weakest performance and risk management practices and, therefore, the highest degree of supervisory concern.

The composite rating generally bears a close relationship to the component ratings assigned. Each component rating is based on a qualitative analysis of the factors comprising that component and its interrelationship with the other components. When assigning a composite rating, some components may be given more weight than others

[1] For purposes of this rating system, the term financial institution refers to those insured depository institutions whose primary Federal supervisory agency is represented on the Federal Financial Institutions Examination Council (FFIEC). The agencies comprising the FFIEC are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. The term financial institution includes Federally supervised commercial banks, savings and loan associations, mutual savings banks and credit unions.

depending on the situation at the institution. In general, assignment of a composite rating may incorporate any factor that bears significantly on the overall condition and soundness of the financial institution. Therefore, the composite rating is not derived by computing an arithmetic average of the component ratings.

The ability of management to respond to changing circumstances and to address the risks that may arise from changing business conditions, or the initiation of new activities or products, is an important factor in evaluating a financial institution's overall risk profile and the level of supervisory attention warranted. For this reason, the management component is given special consideration when assigning a composite rating.

The following two sections contain the composite rating definitions, and the descriptions and definitions for the six component ratings.

Composite Ratings

Composite ratings are based on a careful evaluation of an institution's managerial, operational, financial, and compliance performance. The six key components used to assess an institution's financial condition and operations are: capital adequacy, asset quality, management capability, earnings quantity and quality, the adequacy of liquidity, and sensitivity to market risks. The rating scale ranges from 1 to 5, with a rating of 1 indicating the strongest performance and risk management practices, and the level of least supervisory concern. A 5 rating indicates the most critically deficient level of performance, the weakest risk management practices, and the greatest supervisory concern. The composite ratings are defined as follows:

Composite 1

Financial institutions in this group are sound in every respect; as such, all components are rated 1 or 2. Any weakness is minor and can be handled in a routine manner by management. Substantial compliance with laws and regulations is noted. These financial institutions are more capable of withstanding the vagaries of business conditions and are resistant to outside influences such as economic instability in their trade area. As a result, these financial institutions exhibit the strongest performance and risk management practices and give no cause for supervisory concern.

Composite 2

Financial institutions in this group are fundamentally sound. For a financial institution to receive this rating, normally no component rating should be more severe than 3. Only modest weaknesses are present and are well within management's capabilities and willingness to correct. These financial institutions are stable and are capable of withstanding business fluctuations. These financial institutions are in substantial compliance with laws and regulations and there are no material supervisory concerns. Overall risk management practices are satisfactory. As a result, the supervisory response is informal and limited.

Composite 3

Financial institutions in this group exhibit some degree of supervisory concern in one or more of the component areas. These financial institutions exhibit a combination of weaknesses that may range from moderate to severe. Risk management practices may be less than satisfactory. The concerns, however, are not of the magnitude to cause a component to be rated more severely than 4.

Financial institutions in this group generally are less capable of withstanding business fluctuations; are more vulnerable to outside influences than those institutions rated a composite 1 or 2; and, management may lack the ability or willingness to effectively address weaknesses within appropriate time frames. Additionally, these financial institutions may be in significant noncompliance with laws and regulations. These financial institutions are a supervisory concern and require more than normal supervision, which may include formal or informal enforcement actions. Failure appears unlikely, however, given the overall strength and financial capacity of these institutions.

Composite 4

Financial institutions in this group are in an unsafe and unsound condition. These are serious financial or managerial deficiencies that result in unsatisfactory performance. The problems range from severe to critically deficient. Risk management practices are generally unacceptable. The weaknesses and problems are not being satisfactorily addressed or resolved by management. There may be significant noncompliance with laws and regulations. Financial institutions in this group generally are not capable of withstanding business fluctuations. Close supervisory attention is required, which means, in most cases, formal enforcement action is necessary to address the problems. Institutions in this group pose a risk to the deposit insurance fund. Failure is a distinct possibility if the problems and weaknesses are not satisfactorily addressed and resolved.

Composite 5

Financial institutions in this group are in an extremely unsafe and unsound condition, exhibit a critically deficient performance, often contain the weakest risk management practices, and are of the greatest supervisory concern. The volume and severity of problems is beyond management's ability or willingness to control or correct. Immediate outside financial or other assistance is needed in order for the financial institution to be viable. Continuous close supervisory attention is warranted. Institutions in this group pose a significant risk to the deposit insurance fund. Failure is highly probable and the least-cost resolution alternatives are being considered by the appropriate agencies.

Component Ratings

Each of the component rating descriptions is divided into three sections: an introductory paragraph; a list of the principal evaluation factors that relate to that component; and, a brief description of each numerical rating for that component. Some of the evaluation factors are reiterated under one or more of the other components to reinforce the interrelationship between components.

Capital Adequacy

A financial institution is expected to maintain capital commensurate with its existing and potential risk exposures and the ability of management to identify, measure, monitor, and control these exposures. The effect of credit, market and other risks on the financial condition of an institution should be considered when evaluating the adequacy of capital. The types and quantity of risk inherent in an institution's activities will determine the extent of which it may be necessary to maintain capital at levels above required regulatory minimums to properly reflect the potentially adverse consequences that these risks may have on the institution's capital.

The capital adequacy of an institution is rated based on an assessment of:

- The level and quality of capital and the overall financial condition of the institution.
- The nature and extent of risks to the organization.
- The ability of management to identify, measure, monitor, and control risk and address emerging needs for additional capital.

- The nature, trend, and volume of problem assets, and the adequacy of allowances for loan and lease losses and other valuation reserves.
- Balance sheet composition, including the nature and amount of intangible assets, market risk, concentration risk, and risks associated with nontraditional activities.
- Risk exposure represented by off-balance sheet activities.
- The quality and strength of earnings, and the reasonableness of dividends.
- Prospects and plans for growth, as well as past experience in managing growth.
- Access to capital markets and other sources of capital.
- Compliance with applicable laws, regulations, and supervisory guidelines, including plans for maintaining adequate capital or correcting other deficiencies.

Ratings

1. A rating of 1 indicates a strong capital level that is more than adequate to support an institution's risk profile.
2. A rating of 2 indicates a satisfactory capital level given the financial institution's risk exposure and the quality of its risk management practices.
3. A rating of 3 indicates a less than satisfactory level of capital that does not fully support the institution's risk profile. The rating indicates a need for improvement, even if the institution's capital level exceeds minimum regulatory and statutory requirements.
4. A rating of 4 indicates a deficient level of capital. In light of the level of risk exposure, viability of the institution may be threatened. Assistance from shareholders or other external sources of financial support is required.
5. A rating of 5 indicates a critically deficient level of capital such that the institution's viability is threatened. Immediate assistance from shareholders or other external sources of financial support is required.

Asset Quality

The asset quality rating reflects the quantity of existing and potential credit risk associated with the loan and investment portfolios, other real estate owned, and off-balance sheet transactions. The ability of management to identify, measure, monitor, and control credit risk is also reflected here. The evaluation of asset quality should consider the adequacy of the allowance for loan and lease losses and weigh the exposure to counterparty, issuer, or borrower default under actual or implied contractual agreements. All other risks that may affect the value or salability of an institution's assets, including, but not limited to, operating, market, reputation, strategic, or compliance risks should also be considered.

The asset quality of a financial institution is rated based on an assessment of:

- The adequacy of underwriting standards and appropriateness of risk identification practices.
- The level, distribution, severity, and trend of classified assets, nonaccrual and restructured loans, delinquent loans, and nonperforming assets.
- The adequacy of the allowance for loan and lease losses and other asset valuation reserves.
- The exposure to off-balance sheet transactions, such as unfunded commitments, commercial and standby letters of credit, and lines of credit.
- The volume, diversification, and quality of the loan and investment portfolios.
- The extent of securities underwriting activities and exposure to counterparties in trading activities.
- The existence of asset concentrations.
- The adequacy of loan and investment policies, procedures, and practices.
- The ability of management to properly administer its assets, including the timely identification and collection of problem assets.
- The adequacy of internal controls and management information systems.
- Compliance with applicable laws and regulations.

Ratings

1. A rating of 1 indicates strong asset quality and credit administration practices without either significant weaknesses or risk exposure. Asset quality in such institutions is of minimal supervisory concern.
2. A rating of 2 indicates satisfactory asset quality and credit administration practices. The level and severity of classifications, other weaknesses, and risks warrant a limited level of supervisory attention.
3. A rating of 3 is assigned when asset quality or credit administration practices are less than satisfactory. Trends may be stable or indicate deterioration in asset quality or an increase in risk exposure. The level and severity of classified assets, other weaknesses, and risks require an elevated level of supervisory concern. There is generally a need to improve credit administration and risk management practices.
4. A rating of 4 is assigned to financial institutions with deficient asset quality or credit administration practices. The levels of risk and problem assets are significant, inadequately controlled, and subject the financial institution to potential losses in excess of a reasonable limit that, if left unchecked, may threaten its viability.
5. A rating of 5 represents critically deficient asset quality or credit administration practices that present an imminent threat to the institution's viability.

Management

The capability of the board of directors and management to identify, measure, monitor, and control the risks of an institution's activities and to ensure a financial institution's safe, sound, and efficient operation in compliance with applicable laws and regulations is reflected in this rating. Depending on the nature and scope of an institution's activities, management practices may need to address some or all of the following risks: credit, market, operating or transaction, reputation, strategic, compliance, legal, liquidity, and other risks. Sound management practices are demonstrated by: active oversight by the board of directors and management; competent personnel; adequate policies, processes and controls addressing areas of an institution's operations; and effective risk monitoring and management information systems. This rating should reflect the board's and management's ability as it applies to all aspects of banking operations as well as other financial service activities in which the institution may be involved.

The performance of management and the board of directors and the quality of risk management is rated based upon an assessment of:

- The level and quality of oversight and support of institution activities by the board of directors and management.
- The ability of the board of directors and management to plan for, and respond to, changing circumstances, and address risks that may arise from changing business conditions or the initiation of new activities or products.
- The adequacy of, and conformance with, internal policies and controls addressing the operations and risks of significant activities.
- The accuracy, timeliness, and effectiveness of management information and risk monitoring systems.
- The adequacy of audits and internal controls to: promote effective operations and reliable financial and regulatory reporting; safeguard assets; and ensure compliance with laws, regulations, and internal policies.

- Compliance with laws and regulations.
- Responsiveness to recommendations from auditors and supervisory authorities.
- Management depth and succession.
- The extent that the board of directors and management is affected by, or susceptible to, dominant influence or concentration of authority.
- Reasonableness of compensation policies and avoidance of self-dealing.
- Demonstrated willingness to serve the legitimate banking needs of the community.
- The overall performance of the institution and the level of risk to which it is exposed.

Ratings

1. A rating of 1 indicates strong performance by management and the board of directors and strong risk management practices. All significant risks are consistently and effectively identified, measured, monitored, and controlled. Management and the board have demonstrated the ability to promptly and successfully address existing and potential problems and risks.

2. A rating of 2 indicates satisfactory management and board performance and risk management practices. Minor weakness may exist, but are not material to the safety and soundness of the institution and are being addressed. In general, significant risks and problems are effectively identified, measured, monitored, and controlled.

3. A rating of 3 indicates management and board performance or risk management practices that need improvement. Performance or risk management practices are less than satisfactory given the nature of an institution's activities. The capabilities of management and the board of directors may be insufficient for the type, size, or condition of the institution. Problems and significant risks may be inadequately identified, measured, monitored, or controlled.

4. A rating of 4 indicates deficient management and board performance or risk management practices. Risk management practices are inadequate considering the institution's activities, or the level of problems and risk exposure is excessive. Problems and significant risks are inadequately identified, measured, monitored, or controlled and require immediate action by the board and management to preserve the soundness of the institution. Replacing or strengthening of management or the board may be necessary.

5. A rating of 5 indicates critically deficient management and board performance or risk management practices. Management and the board of directors have not demonstrated the ability to correct problems and implement appropriate risk management practices. Problems and significant risks are inadequately identified, measured, monitored, or controlled and now threaten the continued viability of the institution. Replacing or strengthening of management or the board of directors is necessary.

Earnings

This rating reflects not only the quantity of earnings, but also factors that may affect the sustainability or quality of earnings. The quantity as well as the quality of earnings can be affected by excessive or inadequately managed credit risk, that may result in loan losses and require additions to the allowance for loan and lease losses, or high levels of market risk, that may unduly expose an institution's earnings to volatility in interest rates. The quality of earnings may also be diminished by undue reliance on extraordinary gains, nonrecurring events, or favorable tax effects. Future earnings may be adversely affected by: an inability to forecast or control funding and operating expenses; improperly executed or ill-advised business strategies; or poorly managed or uncontrolled exposure to other risks.

The rating of an institution's earnings will be based on an assessment of:

- The level of earnings, including trends and stability.
- The ability to provide for adequate capital through retained earnings.
- The quality and sources of earnings.
- The level of expenses in relation to operations.
- The adequacy of the budgeting systems, forecasting processes, and management information systems in general.
- The exposure to credit risk and the adequacy of the allowance for loan and lease losses and other valuation allowance accounts.
- The exposure to market risks such as interest rate, foreign exchange, and price risks.
- The level of compliance with applicable laws and regulations.

Ratings

1. A rating of 1 indicates earnings that are strong. Earnings are sufficient to support operations and maintain an adequate level of capital after consideration is given to risks and other factors affecting the quality and quantity of earnings.

2. A rating of 2 indicates earnings that are satisfactory. However, earnings that are relatively static, or even experiencing a slight decline, may receive a 2 rating provided the institution's level of earnings is adequate in view of the assessment factors listed above.

3. A rating of 3 should be accorded to earnings that need to be improved in order to fully support operations and provide for the accretion of capital in relation to the financial institution's inherent risks.

4. A rating of 4 indicates earnings are deficient to support operations and retain an appropriate capital level. Institutions so rated may be characterized by erratic fluctuations in net income or net interest margin, the development of a significant negative trend, nominal earnings, unsustainable earnings, intermittent losses or a substantive drop in earnings from the previous year.

5. A rating of 5 indicates earnings performance that is critically deficient. A financial institution with earnings rated 5 is experiencing losses that represent a distinct threat to its viability through the erosion of capital.

Liquidity

In evaluating a financial institution's liquidity position and risk, consideration should be given to current and prospective sources of liquidity compared to funding needs, as well as to the adequacy of funds management practices. In general, funds management practices should ensure that an institution is able to maintain a level of liquidity sufficient to meet its financial obligations in a timely manner and to fulfill the legitimate credit needs of its community. Practices should reflect the ability of the institution to manage unplanned changes in funding sources, as well as react to changes in market conditions that affect the ability to quickly liquidate assets with minimal loss. In addition, funds management practices should ensure that liquidity is not maintained at a high cost, or through undue reliance on funding sources that may not be available in times of financial stress or adverse changes in market conditions.

Liquidity is rated based on a review and assessment of:

- The adequacy of liquidity sources compared to present and future needs and the ability of the institution to meet liquidity needs without adversely affecting operations or condition.
- The availability of assets readily convertible to cash without undue loss.

• Access to money markets and other sources of funding.

• The level of diversification of funding sources, both on- and off-balance sheet.

• The degree of reliance on short-term, volatile sources of funds, including borrowings and brokered deposits.

• The trend and stability of deposits.

• The ability to securitize and sell certain pools of assets.

• The competence of management to properly identify, measure, monitor and control the institution's liquidity position, including the effectiveness of funds management strategies, liquidity policies, management information systems, and contingency funding plans.

• Compliance with applicable laws and regulations.

Ratings

1. A rating of 1 indicates a strong liquidity position and well-developed funds management practices after consideration of risk and other factors. The institution has reliable access to a sufficient volume of liquidity to meet present and anticipated liquidity needs. Access to external sources of funds is on favorable terms.

2. A rating of 2 indicates satisfactory levels of liquidity and risks, but modest weaknesses may be evident in quantitative measures of liquidity or in funds management practices given risk exposures.

3. A rating of 3 denotes liquidity and risk levels or funds management practices in need of improvement. Institutions rated 3 for liquidity may lack ready access to funds on reasonable terms and may evidence significant weaknesses in funds management practices given risk exposures.

4. A rating of 4 represents a deficient liquidity and risk position for current and anticipated needs and inadequate funds management practices. Institutions so rated may not be able to obtain funds from traditional funding sources to meet risk exposures.

5. A rating of 5 indicates a liquidity and risk position so critically deficient that the continued viability of the institution is threatened. Institutions rated 5 for liquidity require immediate external financial assistance to meet maturing obligations and other liquidity needs.

Sensitivity to Market Risks

The sensitivity to market risks component reflects the degree to which changes in interest rates, foreign exhchange rates, or commodity or equity prices can affect a financial institution's assets, earnings, liabilities and capital values. The capacity of management to identify, measure, monitor and control market risk exposure is also a factor that should be considered. Market risks encompass interest rate risk, price risk, and foreign exchange risk. The primary element considered in evaluating market risks is the sensitivity of assets, liabilities, off-balance sheet commitments, and earnings to variability in interest rates. This vulnerability is measured by potential changes in earnings or economic value of capital under an appropriate range of economic scenarios. When significant to an institution, consideration should also be given to the price risk related to trading and investment portfolios. If applicable, the foreign exchange risk to assets, earnings, and capital should also be considered because of the periodic revaluation of financial positions denominated in foreign currencies into U.S. dollar equivalents.

Market risks are rated based on an assement of the following, as appropriate:

• The sensitivity of the financial institutions's net earnings or the economic value of its capital to changes in interest rates under varying scenarios and stress environments.

• The volume, composition, and volatility of any foreign exchange or other trading positions taken by the financial institutions.

• The actual or potential volatility of earnings or capital because of any change in market valuation of trading portfolios or financial instruments.

• The ability of management to identify, measure, monitor and control exposure to interest rate risk, as well as price and foreign exchange risk where applicable and material to an institution.

Ratings

1. A rating of 1 indicates minimal exposure to interest rate, price or foreign exchange risk. Institutions rated 1 have limited exposure to interest rate and other market risks and have strong management systems in place to identify, measure, monitor and control these risks.

2. A rating of 2 is indicative of moderate and controlled exposure to interest rate, price or foreign exchange risk. Management systems are satisfactory, and ensure that market risks are maintained at an acceptable level.

3. A rating of 3 indicates that one or more elements of this component are in need of improvement. A 3 rating may reflect an elevated level of interest rate sensitivity or exposure. It may also indicate significant foreign exchange or repricing exposures which subject earnings and capital to a moderate level of volatility. Management systems for market risks may reflect weaknesses and need improvement.

4. A rating of 4 reflects a financial institution that exhibits exposures to market risks that may erode earnings and threaten solvency. A 4 rating indicates an inordinate exposure to changes in interest rates, or to foreign exchange revaluation or other repricing effects. Management systems for market risks are deficient.

5. A rating of 5 reflects a financial institution with extreme interest rate, foreign exchange, or price risk exposure constituting a critical deficiency, and the continued viability of the institution is threatened.

[End of proposed text of Uniform Financial Institution Rating System.]

Keith J. Todd,

Assistant Excecutive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 96–18187 Filed 7–17–96; 8:45 am]

BILLING CODE OCC: 4810–33–M (25%); Board: 6210–01–M (25%); FDIC: 6714–01–M (25%); OTS: 6720–01–M (25%)

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m., Thursday, July 25, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

• Repeal of Section 934.6 (Budgets) of the Finance Board's Regulations.

• Procedures for Resolution of Outstanding Examination or Supervisory Issues.

• Adoption of Proposed FHLBank System Compensation Regulation.

• 1996 Federal Home Loan Bank Incentive Compensation Plan.

• FHLBank Directors' Compensation Expenses—Final Rule.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–18413 Filed 7–16–96; 2:18 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. National Bancshares Corporation of Texas, Laredo, Texas; and NBT of Delaware, Inc., Wilmington, Delaware, to acquire 100 percent of the voting shares of Luling Bancshares, Inc., Luling, Texas, and thereby indirectly acquire First National Bank, Luling, Texas.

Board of Governors of the Federal Reserve System, July 12, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-18153 Filed 7-17-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. The Landrum Company, Columbia, Missouri; to acquire 100 percent of the voting shares of First Heritage National Bank, Ada, Oklahoma, a *de novo* bank.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Cal Fed Bancorp Inc., Los Angeles, California; to become a bank holding company by acquiring 100 percent of the voting shares of First Citizens Bank, Sherman Oaks, California, and also to retain ownership of California Federal Bank, FSB, Los Angeles, California, and thereby engage in the activity of operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and to retain ownership of the following direct and indirect subsidiaries of this institution: Cal Fed Credit, Inc., Rosemead, California, and thereby engage in making home equity loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Cal Fed Credit of Texas, Inc., Irving, Texas, and thereby engage in holding automobile loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; CalFed Investment Corp., Los Angeles, California, and thereby engage in holding mortgage loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Cal Fed Insurance Agency, Inc., Los Angeles, California, and thereby engage in providing credit related insurance, pursuant to § 225.25(b)(8)(i)&(ii) of the Board's Regulation Y; Cal Fed Investment Services, Los Angeles, California, and thereby engage in securities brokerage services, pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y; Cal Fed Mortgage Company, Los Angeles, California, and thereby engage in holding mortgage loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Cal Fed Service Corporation, Los Angeles, California, and thereby engage in mortgage loan servicing, pursuant to § 225.25(b)(1) of the Board's Regulation Y. Cal Fed Bancorp, Inc. also has proposed to retain the following subsidiaries: Cal Fed Enterprises, Los Angeles, California; CFE Portrero Corporation, Los Angeles, California;

Cal Fed Syndications, Los Angeles, California; California Communities, Inc., Los Angeles, California; CF Management Corp., Los Angeles, California; CF Recovery Corp. One, Los Angeles, California; CF Recovery Corp. Two, Los Angeles, California; Melrose Funding Incorporated, Los Angeles, California; XCF Acceptance Corporation, Los Angeles, California.

Board of Governors of the Federal Reserve System, July 12, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–18219 Filed 7-17-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposal to Engage in Nonbanking Activities or to Acquire Companies that are Engaged in Nonbanking Activities

1. Toronto-Dominion Bank, Toronto, Canada; and TD/Oak, Inc., New York, New York, (together ''Notificant'') have applied for Board approval pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) (''BHC Act'') and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) to acquire up to 100 percent of the voting shares of Waterhouse Investor Services, Inc. (''Waterhouse''), and to acquire indirectly Waterhouse Securities, Inc. (''Company''), both of New York, New York, and thereby to engage throughout the United States in the purchase and sale of all types of securities on the order of customers as ''riskless principal.''

Waterhouse currently has pending before the Board a proposal to act as riskless principal in transactions involving securities of all registered investment companies, other than investment companies advised by Company or any of its affiliates. *See* 61 FR 31,942 (1996). In authorizing bank holding companies to engage in riskless principal activities, the Board previously has relied on a commitment that the bank holding company would not act as riskless principal for registered investment company securities or for securities of investment companies advised by the bank holding company or any of its affiliates.

As part of Notificant's application to acquire Waterhouse and its subsidiaries, Notificant also has requested the Board's approval to conduct the riskless principal activity proposed by Waterhouse. This notice accordingly supplements and modifies a previous notice with respect to this proposal. *See* 61 FR 28,585 (1996).

Notificant's proposal is available for immediate inspection at the Federal Reserve Bank of New York and at the Board in Washington, D.C. Interested persons may express their views on the proposal in writing, including on whether the proposed activities ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. § 1843(c)(8). Any request for a hearing on this notice must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the notice must be received not later than August 2, 1996, at the Federal Reserve Bank of New York or to the attention of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

Board of Governors of the Federal Reserve System, July 12, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–18151 Filed 7–17–96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Pinnacle Banc Group, Inc., Oakbrook, Illinois; to merge with Financial Security Corp., Chicago, Illinois, and thereby indirectly to acquire Security Federal Savings and Loan Association, Chicago, Illinois, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 12, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–18152 Filed 7–17–96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or

other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. F&M Bancorp, Frederick, Maryland; to acquire Home Federal Corporation, Hagerstown, Maryland, and its subsidiary, Home Federal Savings Bank, Hagerstown, Maryland, and thereby engage in operating a savings association; selling credit life and health insurance in connection with extensions of credit by affiliates; and providing securities brokerage services related to buying and selling securities solely as agent for the account of customers, pursuant to § 225.25(b)(8)(i), (9), and (15) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NEB Corporation, Fond du Lac, Wisconsin; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 12, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–18220 Filed 7–17–96; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 21]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to the Cheyenne, Wyoming Area

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of special actual subsistence expense ceilings for official travel to Cheyenne (Laramie County), Wyoming, Laramie (Albany County), Wyoming, and Fort Collins (Larimer County), Colorado. The Department of the Air Force requested establishment of the increased rates to accommodate employees who perform temporary duty in either of the three localities and who experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Frontier Days special event held there.

EFFECTIVE DATES: These special rates are applicable to claims for reimbursement covering travel to Cheyenne and Laramie, Wyoming, and to Fort Collins, Colorado, during the period July 15 through 31, 1996.

FOR FURTHER INFORMATION CONTACT:

Devoanna Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(3), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Cheyenne (Laramie County) and Laramie (Albany County), Wyoming and Fort Collins (Larimer County), Colorado, for travel during the period July 15 through 31, 1996. The attached GSA Bulletin FTR 21 is issued to inform agencies of the establishment of these special actual subsistence expense ceilings.

Dated: July 9, 1996.

Becky Rhodes,

Deputy Associate Administrator, Office of Transportation and Personal Property.

Attachment

[GSA Bulletin FTR 21]

July 9, 1996.

To: Heads of Federal agencies

Subject: Reimbursement of higher actual subsistence expenses for official travel to the Cheyenne, Wyoming area

1. *Purpose.* This bulletin informs agencies of the establishment of special actual subsistence expense ceiling for official travel to Cheyenne (Laramie County), Wyoming , Laramie (Albany County), Wyoming, and Fort Collins (Larimer County), Colorado, due to the escalation of lodging rates during the annual Frontier Days special event held there. These special rates apply to claims for reimbursement covering travel during the period July 15 through 31, 1996.

2. *Background.* The Federal Travel Regulation (FRT) (41 CFR chapters 301–304 part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period.

The Department of the Air Force requested establishment of such rates for the Cheyenne, Wyoming area to accommodate employees who perform temporary duty there and experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Frontier Days special event. These circumstances justify the need for higher subsistence expenses reimbursement in or near Cheyenne during the designated period.

3. *Maximum rates, effective dates, and locations.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Cheyenne (Laramie County), Wyoming, a higher actual subsistence expense reimbursement rate not to exceed $132 maximum for lodging with a $30 allowance for meals and incidental expenses (M&IE), to Laramie (Albany County), Wyoming, a higher actual subsistence expense reimbursement rate not to exceed $77 maximum for lodging with a $26 M&IE allowance, and to Fort Collins (Larimer County), Colorado, a higher actual subsistence expense reimbursement rate not to exceed $103 maximum for lodging with a $26 M&IE allowance. These special reimbursement rates apply for travel during the period July 15 through 31, 1996.

4. *Expiration date.* This bulletin expires for administrative tracking purposes on December 31, 1996.

5. *For further information contact.* Devoanna Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT),

Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–18221 Filed 7–17–96; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research; Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of August 1996:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: August 15, 1996, 8:30 a.m..

Place: DoubleTree Hotel, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852. Open August 15, 8:30 a.m. to 8:45 a.m. Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing to develop and test quality of care measures. The projects undertaken as a result of this RFA will: 1) expand the conceptual and methodological basis for developing quality measures, and 2) produce relevant, feasible, reliable, valid, and rigorously tested sets of new quality measures for comparison across different sites.

Agenda: The open session of the meeting on August 15, from 8:30 a.m. to 8:45 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Linda Blankenbaker, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1437 x1603.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 12, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–18231 Filed 7–17–96; 8:45 am]

BILLING CODE 4160–90–M

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of July 1996:

Name: Subcommittee on Quality Measurement Network (QMNet).

Date and Time: July 30–31, 1996, 9:00 a.m.–5:00 p.m..

Place: Agency for Health Care Policy and Research, Executive Office Center, 6th Floor Conference Room, 2101 East Jefferson Street, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals regarding ''QMNet'' published in the Commerce Business Daily on May 14, 1996. The purpose of this contract is to build a more comprehensive, publicly accessible quality measurement resource that emphasizes a public-private partnership approach.

Agenda: The session of the Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Al Deal, Office of Management, Contracts Management Staff, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 601, Rockville, Maryland, 20852, (301) 594–1445.

Dated: July 12, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–18232 Filed 7–17–96; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

[30 DAY–16]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request more information on these projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on July 3, 1996.

Proposed Projects

1. Cost and Impact of Illnesses and Injuries Associated with Child Care Attendance—New—This is a longitudinal follow-up telephone survey of parents of children attending large (15 children/center) day care centers and family day care homes (7 children) in order to (1) determine the extent to which the size of day care centers are associated with the rates of illnesses and injuries for children attending day care; (2) to estimate the costs of illnesses and injuries for children attending small and large day care centers; (3) to compare the health of the family members of children attending small verses large day care centers; and (4) to estimate the costs of illnesses for the family members of children attending small versus large day care centers. The analyses of the proposed survey data will allow CDC to evaluate the relative costs and benefits of attending small as opposed to large day care centers. The information will provide timely and valuable data to policy makers, medical professionals and scientists.

Respondents	No. of respondents	No. of responses/respondents	Avg. burden/response (in hours)
Parents (Monthly)	272	1	0.583
Parents (Annual)	272	11	0.167

Respondents	No. of respondents	No. of responses/respondents	Avg. burden/response (in hours)
Child care provider	70	1	0.5

The total annual burden is 693. Send comments to the CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

2. National Survey of Ambulatory Surgery—(0920–0334)—Extension—The National Survey of Ambulatory Surgery (NSAS) has been conducted annually since 1994 by the National Center for Health Statistics, CDC. It is the only source of clinical information nationally on utilization of ambulatory surgery. It complements surgery data obtained in another NCHS survey, the National Hospital Discharge Survey (NHDS), which provides annual data concerning the nation's use of inpatient medical and surgical care provided in short-stay, non-Federal hospitals. These NHDS data have been used for more than two decades to analyze the types of surgical treatment provided to hospital inpatients. However, due to advances in medical technology, many surgical treatments and diagnostic procedures are now provided in ambulatory settings which are outside the scope of the NHDS. The NSAS, a national probability sample of hospital-based and freestanding ambulatory surgery centers in the U.S., has been designed to provide valid data about medical and surgical care received in ambulatory surgery locations. Data for the NSAS are collected annually on approximately 120,000 ambulatory surgery cases. The data items which are abstracted from medical records are the basic core of variables from the Uniform Hospital Discharge Data Set (UHDDS) as well as surgery times, total charges and information on anesthesia. These NSAS data will be used for a variety of planning, administrative, and evaluation activities by government, professional, scientific, academic, and commercial institutions. Data collected through the NSAS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. For example, selected government agencies are interested in specific NSAS data to track the incidence of selected ambulatory procedures, e.g., estimates of tubal sterilization, estimates of endoscopies and related digestive tract procedures, and estimates of endoscopic removal of pre-cancerous polyps. In addition, NSAS data will provide annual updates for numerous tables in the Congressionally-mandated NCHS report, Health, United States.

Respondents	No. of responses	No. of responses/respondent	Avg. burden/response (in hrs.)
Induction	40	1	1.5
Out-of-scope Verification	140	1	0.066
Sample Listing Sheet:			
ASC Personnel	224	12	0.5
Census Personnel	267	12	0
Medical Abstract:			
ASC Personnel	324	250	0.2
Census Personnel	167	250	0.03333
Annual Update	491	1	0.083
Quality Control	245	20	0.0333

The total annual burden is 19,209. Send comments to the CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

Dated: July 12, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–18237 Filed 7–17–96; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 96F–0242]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of perfluoroalkyl substituted phosphate ester acids, ammonium salts, formed by the reaction of 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide as an oil and water repellant for paper and paperboard intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by August 19, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4513) has been filed by Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of perfluoroalkyl substituted phosphate ester acids, ammonium salts, formed by the reaction of 2,2-bis[(γ,ω-

perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol, polyphosphoric acid (CAS Reg. No. 8017–16–1) and ammonium hydroxide as an oil and water repellant for paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 19, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: June 27, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–18165 Filed 7–17–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0213]

Toyobo Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Toyobo Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,4-benzenedicarboxylic acid, polymer with 1,4-butanediol, (Σ)-2-butanedioic acid, 1,2-ethanediol, ethyl-2-propenoate, hexanedioic acid and 2-propenoic acid, graft, in nylon 6 and nylon 6 modified with nylon MXD–6 articles intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by August 19, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4511) has been filed by Toyobo Co., Ltd., 2–1–1 Hon Katata Otsu, Shiga 520–02, Japan. The petition proposes to amend the food additive regulations to provide for the safe use of 1,4-benzenedicarboxylic acid, polymer with 1,4-butanediol, (Σ)-2-butanedioic acid, 1,2-ethanediol, ethyl 2-propenoate, hexanedioic acid and 2-propenoic acid, graft, in nylon 6 and nylon 6 modified with nylon MXD–6 articles intended for use in contact with food. The graft resins of this type are generically called copolyester-graft-copolymer.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 19, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: June 20, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–18284 Filed 7–17–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0220]

Healthdyne, Inc.; Premarket Approval of System 37® Home Uterine Activity Monitoring System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Healthdyne, Inc., Marietta, GA 30067, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of System 37® Home Uterine Activity Monitoring System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter on September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 19, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Drive, rm. 1–23,Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION: On July 24, 1992, Healthdyne, Inc., Marietta, GA 30067, submitted to CDRH an application for premarket approval of System 37® Home Uterine Activity Monitoring System. The device is a Home Uterine Activity Monitor and is indicated for use, in conjunction with standard high risk care, for the daily at-home measurement of uterine activity in pregnancies ≥ 24 weeks gestation for women with previous preterm delivery. Uterine activity data are displayed at a remote location to aid in the early detection of preterm labor.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On September 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 19, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–18286 Filed 7–17–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0203]

Integra LifeSciences Corp.; Premarket Approval of INTEGRA Artificial Skin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Integra LifeSciences Corp., Plainsboro, NJ, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of INTEGRA Artificial Skin. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 1, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 19, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Stephen P. Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION: On March 30, 1992, Integra LifeSciences Corp., Plainsboro, NJ 08536, submitted to CDRH an application for premarket approval of INTEGRA Artificial Skin. The device is indicated for the postexcisional treatment of life-threatening full-thickness or deep partial-thickness thermal injury where sufficient autograft is not available at the time of excision or not desirable due to the physiological condition of the patient.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the General and Plastic Surgery Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On March 1, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 19, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this

document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 5, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–18164 Filed 7–17–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0233]

Infinitech Inc.; Premarket Approval of Perfluoron™ (Highly Purified Perfluoro-n-Octane Liquid)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Infinitech Inc., Chesterfield, MO, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Perfluoron (highly purified perfluoro-n-octane liquid). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 29, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 19, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On April 28, 1995, Infinitech Inc., Chesterfield, MO 63005, submitted to CDRH an application for premarket approval of Perfluoron (highly purified perfluoro-n-octane liquid). The device, a perfluorocarbon liquid, is an intraoperative tool indicated for use during vitreoretinal surgery in patients with primary or recurrent retinal detachment which is complicated by penetrating ocular trauma, giant retinal tear(s) or proliferative vitreoretinopathy.

On October 19, 1995, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On February 29, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 19, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 5, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–18283 Filed 7–17–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection Activity; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, (Pub. L. 104–13; 44 U.S.C.) the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed information dissemination activities for public comment. Interested persons are invited to send comments regarding the burden or any other aspect of this information dissemination activity, including any of the following subjects: (1) The necessity and utility of the proposed activity for the proper performance of the agency's functions; (2) ways to enhance the quality, utility, and clarity of the information being disseminated; and (3) the use of other automated techniques or other forms of information dissemination to minimize the burden of the information dissemination activity.

The Health Care Financing Administration is soliciting comments from the public on dissemination of information via an agency home page on the Internet. This service is a result of an ongoing process of creating a more customer-oriented, efficient government by improving public access to agency information electronically. The objective is to make releasable information available through the Internet when there is an important or substantial interest.

Examples of the information available include: (1) Program information overview; (2) HCFA strategic plan and 5-year Information Resource Management plan; (3) Laws and regulations; (4) Press information, including news releases, Administrator speeches and testimony; (5) Office of

Research initiatives; (6) Public Use Files which include data that supports the institutional payment rates; (7) Beneficiary publications, including the Medicare Handbook; and (8) Electronic interactive communication of inquiries. The availability of the above on the Internet does not eliminate the availability of this information from the agency in hardcopy, tape, or other currently available formats.

The Health Care Financing Administration will continue to apply the rules of the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 522a) when disclosing information via the home page. All graphic and table information displays will be converted to text format to ensure the content is accessible and readable for users with disabilities, as well as to accommodate various browser software packages and low-bandwidth access.

The Internet is a powerful tool for information dissemination and interactive communication which HCFA aims to use to improve program management and to provide improved services for program clients and customers.

On-line information available on HCFA's home page will be updated so documents represent a current resource rather than a historical artifact. When a publication is changed, its title page or the home page will include a modification date.

The intent is to continue to increase the presence of the agency data available on the Internet. Some of the areas for future consideration are: (1) Reporting of fraud and abuse; (2) Quality of care issues; (3) Request for Proposals; (4) Published statistics and evaluation reports; (5) Solicitations; (6) Increase the availability of the Public Use Files; (7) Additional Medicare and Medicaid program information; and (8) Managed Care information.

HCFA's home page may be accessed at http://www.hcfa.gov.

FOR FURTHER INFORMATION CONTACT: Malcolm Sneen, Chief, Information Processing Branch, 410–786–0163 or send an e-mail to MSneen @ hcfa.gov., or John Burke, HCFA Paperwork Clearance Officer, 410–786–1325.

Written comments and recommendations for the proposed information dissemination activity must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 11, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–18241 Filed 7–17–96; 8:45 am]

BILLING CODE 4120–03–P

[HCFA–222, R–43]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Independent Rural Health Center/Freestanding Federally Qualified Health Center Cost Report; *Form No.:* HCFA–222; *Use:* The independent rural health clinic/freestanding federally qualified health center cost report is the cost report to be used by the mentioned clinics/centers to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, local or tribal government; *Number of Respondents:* 3,000; *Total Annual Responses:* 3,000; *Total Annual Hours Requested:* 150,000.

2. Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Conditions of Participation for Portable X-ray Suppliers (42 CFR 405 Subpart N); *Form No.:* HCFA-R–43; *Use:* This information is needed to determine if portable X-ray suppliers are in compliance with published health and safety requirements. *Frequency of Record keeping:* Retain records for two years; *Affected Public:* Business or other-for-profit; *Number of Respondents:* 554; *Total Annual Responses:* 554; *Total Annual Hours Requested:* 1,385.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 11, 1996

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–18242 Filed 7–17–96; 8:45 am]

BILLING CODE 4120–03–P

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel I in August.

A summary of the meetings and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–4783.

Substantive program information may be obtained from the individual named as Contact for each of the meetings listed below.

The meetings will include the review, discussion and evaluation of individual cooperative agreement and grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 5, 1996—8:30 a.m. until Adjournment.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Meeting Rooms: Room Assignments Posted in Hotel Lobby.

Closed: August 5, 1996—9:00 a.m. until Adjournment.

Panel: Predictor Variables and Development(GFA SP96–01).

Contact: Pamela Roddy, Ph.D., Room 17–89, Parklawn Building, Telephone: (301) 443–0411 and FAX: (301) 443–3437.

Panel: Managed Care (GFA TI96–01).

Contact: Sandra Stephens, Room 17–89, Parklawn Building, Telephone: (301) 443–9915 and FAX: (301) 443–3437.

Panel: Cannabis Dependence Treatment (GFA TI96–02).

Contact: Stanley Kusnetz, Room 17–89, Parklawn Building, Telephone: (301) 443–9918 and FAX: (301) 443–3437.

Panel: Wrap Around Services (GFA TI96–03).

Contact: Ray Lucero, Room 17–89, Parklawn Building, Telephone: (301) 443–9912 and FAX: (301) 443–3437.

Panel: Homelessness Prevention Project (GFA SM96–01).

Contact: Wendy B. Davis, Room 17–89, Parklawn Building, Telephone: (301) 443–9912 and FAX: (301) 443–3437.

Dated: July 15, 1996.

Jeri Lipov,

Committee Management Officer, Sustance Abuse and Mental Health, Services Administration.

[FR Doc. 96–18282 Filed 7–17–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On May 22, 1996, a notice was published in the Federal Register, Vol. 61, No. 100, Page 25687, that an application had been filed with the Fish and Wildlife Service by Carnegie Museum of Natural History for a permit (PRT–814780) to import the hide of one polar bear for public display.

Notice is hereby given that on July 2, 1996, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: July 12, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–18184 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–55–P

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10© of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–816827

Applicant: Florida Museum of Natural History, University of Florida, Gainesville, FL

The applicant requests a permit to import samples from wild Yacare (*Caiman yacare*), broad snouted caiman (*Caiman latirostris*) and black caiman (*Melanosuchus niger*) in Bolivia for DNA characterization to aid Bolivia's conservation and enforcement programs for these species in the wild. This notification covers activities conducted by the applicant over a five year period.

PRT–816842

Applicant: William Heubaum, Dakota Dunes, SD

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–816854

Applicant: Henry Doorly Zoo, Center for Conservation & Research, Omaha, NE

The applicant requests reissuance and amendment of a previously issued permit, 796331, to import blood samples from wild, captive-held and captive-born galapagos tortoise (*Geochelone nigra*) from locations world-wide for scientific research to benefit the species in the wild. This notification covers activities conducted by the applicant over a five year period.

PRT–816107

Applicant: Bear Country, U.S.A., Rapid City, SD

The applicant requests a permit to export one male and four female captive-born gray wolf (*Canis lupus*) to the Calgary Zoo, Calgary, Alberta, Canada for the purpose of enhancement of the species through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 12, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–18185 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of Application for Incidental Take Permit for The Peregrine Fund's Aplomado Falcon Reintroduction Program in Texas

APPLICANT: J. Peter Jenny, Boise, Idaho.

SUMMARY: The Peregrine Fund (J. Peter Jenny) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(A)1(a) of the Endangered Species Act (Act). The proposed permit, which is for a period not to exceed 99 years, would authorize the future take of the endangered northern aplomado falcon (*Falco femoralis septentrionalis*) incidental to such lawful activities as farming, ranching, and residential development on private land in a 14 county area of southern Texas. The proposed permit would authorize incidental take only on land that is enrolled in a ''safe harbor'' program as described in documents associated with this action.

An Environmental Assessment (EA) and Habitat Conservation Plan (HCP) have been prepared for the incidental take permit application.

A determination of whether jeopardy to the species is likely to result or a Finding of No Significant Impact (FONSI), will not be made before 30

days from the publication date of this notice. This notice is provided pursuant to Section10 of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by August 19, 1996.

ADDRESSES: Persons wishing to review the application, the EA/HCP, or other associated documents may obtain a copy by contacting Steven D. Arey or Edith A. Erfling, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058 (713/286–8282). Documents will be available for public inspection through a written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service's Clear Lake Ecological Services Field Office at the above address. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Clear Lake Ecological Services Field Office at the address above. Please refer to permit number PRT - 814839 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Steven D. Arey or Edith A. Erfling at the above Clear Lake Ecological Services Field Office address.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the taking of endangered species such as the aplomado falcon. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species, when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

In 1993, The Peregrine Fund initiated the release phase of the northern aplomado falcon restoration program with the release of captive-reared falcons on Laguna Atascosa National Wildlife Refuge in Texas. The next step is an expansion of this program to include restoration of the aplomado falcon on private lands. A significant component of this reintroduction program is the development of a plan under Section 10(a)(1)(b) of the Act that encourages the release of aplomado falcons on private land in return for protection, a ''safe harbor,'' from any additional future liabilities under the Act. While current land use would result in minimal negative impact to the falcon, and may in fact be essential to the success fo the aplomado falcon restoration effort, landowners are concerned that the presence of aplomado falcons may in the future restrict land use practices and/or options.

Under the proposed ''safe harbor'' program participating landowners will be permitted to take aplomado falcons incidental to future land use actions, provided that the landowner maintains any established baseline responsibilities. Only land that is enrolled in the program for which a landowner has a signed cooperative agreement will be covered by the proposed permit.

The agreement will identify any existing aplomado falcon baseline responsibilities and grant permission for the release of birds on their land. Agreements may be for varying periods of time and shall be revocable by the landowner.

This proposal does not involve the incidental take of existing endangered species habitat (the baseline habitat on private land will be protected). Nor does the proposal allow an endangered species to be shot, captured, or otherwise directly ''taken.''

The area to be affected by the proposed action encompasses the following 14 counties in southern Texas: Calhoun, Refugio, Aransas, San Patricio, Nueces, Kleberg, Kenedy, Willacy, Cameron, Hidalgo, Brooks, Victoria, Jackson, and Matagorda. Within this specific plan area, land potentially eligible for inclusion in the conservation plan include all privately owned as well as non-federal public land, including land owned by the State, counties, cities, and other governmental entities.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–18238 Filed 7–17–96; 8:45 am]

BILLING CODE 4510–55–P

Bureau of Land Management

[NM017–1430–01/G–010–G6–205; NMNM 90010]

Recreation and Public Purposes Act Classification and Partial Classification Termination and Opening Order; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice classifies and segregates 5 acres in T. 24 N., R. 2 W., NMPM, Rio Arriba County from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, as amended. It also partially terminates the April 13, 1994, Recreation and Public Purposes classification and provides for opening 5 acres in T. 25 N., R. 3 W., NMPM, Rio Arriba County to application under the public land laws and location and entry under the general mining laws.

FOR FURTHER INFORMATION CONTACT: Joseph Jaramillo, Realty Specialist, Rio Puerco Resource Area, 435 Montano Road NE., Albuquerque, New Mexico 87107, 505–761–8779.

SUPPLEMENTARY INFORMATION: 1. The following public land in Rio Arriba County, New Mexico, has been examined and found suitable for classification for conveyance to the Lindrith Baptist Church for the Lindrith cemetery site under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq*). The land was originally classified for Recreation and Public Purposes in a notice published in the Federal Register on April 13, 1994, (59 FR 17564 and 17565). It was later determined that the land was not available for other uses when the original classification notice was published. It was segregated from all other forms of use or disposal under the public land laws by airport lease NMNM 34098. The land was subsequently opened to the operation of the public land laws on July 12, 1996.

New Mexico Principal Meridian, New Mexico

T. 24 N., R. 2 W.,
Sec. 20, S½NW¼NE¼SW¼SE¼,
S½NE¼NW¼SW¼SE¼,
N½SE¼NW¼SW¼SE¼, and
N½SW¼NE¼SW¼SE¼.

The area described contains 5 acres.

Upon publication of this notice in the Federal Register, the land described in paragraph one will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The terms and conditions identified in the Federal Register notice of April 13, 1994, are still applicable. Application and classification comments were requested in the April 13, 1994, Federal Register notice. Classification of the land described above becomes effective 60 days from the date of publication in the Federal Register. The land will not be offered for conveyance until the classification becomes effective.

2. The land described below is part of the public land classified as suitable for conveyance under the Recreation and Public Purposes Act in the April 13, 1994, Federal Register notice. The land

was segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The Ojito Cemetery site was reduced from 10 acres to 5 acres and the land described below will not be conveyed.

New Mexico Principal Meridian, New Mexico

T. 25 N., R. 3 W.,
Sec. 22, S½NE¼NW¼NW¼.

The area described contains 5 acres.

The Recreation and Public Purposes classification on the land described in paragraph two is hereby terminated. At 9:00 a.m. on August 19, 1996, the land described in paragraph two will be opened to appropriation under the public land laws and location and entry under the general mining laws, subject to any valid existing rights, and the requirements of applicable laws, rules and regulations. All applications received at or prior to 9:00 a.m. shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: July 11, 1996.

Sue E. Richardson,

Associate District Manager.

[FR Doc. 96–18247 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–AG–M

[CA–068–95–7123–00–6617]

Closure of Public Lands Surrounding the El Mirage Cooperative Management Area, San Bernardino County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Closure of public lands administered by the Bureau of Land Management within the El Mirage area of influence, as described in the Management Plan for the El Mirage Cooperative Management Area (approved August 1990), which are outside the boundaries of the El Mirage Cooperative Management Area.

SUMMARY: In accordance with title 43, Code of Federal Regulations, § 8364.1 notice is hereby given that all the below listed lands contained within 51 sections of public land surrounding the El Mirage Cooperative Management Area within the Barstow Resource Area in San Bernardino County and administered by the Bureau of Land Management have been closed to vehicle entry.

This closure order affects ALL the public lands contained within all or part of the 51 sections of land (see map) surrounding the El Mirage Cooperative Management Area, San Bernardino County, California under the administrative responsibility of the Barstow Resource Area, California Desert District. The following is a description of the land affected by this closure order:

San Bernardino Base and Meridian

T. 6N., R. 8W.,
Sec. 1.
T. 7N., R. 8W.,
Sec. 11, 12, 14, 24, and 25.
T. 6N., R. 7W.,
Sec. 6, 8, 9, 13, 18, 19, and 20.
T. 7N., R. 7W.,
Sec. 2, 4, 12, 15, 18, 19, 20, 29, and 31.
T. 8N. R. 7W.,
Sec. 26, 27, 28, 32, 34, and 35.
T. 7N., R. 6W.,
Sec. 6, 7, 8 and those parts of Sections 18 and 20 that are north of the ridge line in the Shadow Mountains.
T. 8N., R. 6W.,
Sec. 26, 27, 28, 30, 31, 32, 34, and 35.
T. 6N., R. 5W.,
Sec 6.
T. 7N., R. 5W.,
Sec. 6, 8, 19, 20, 30 and 31.
T.8N., R.5W.,
Sec. 30, 31, and 32.

This closure does not apply to the operation of vehicles, licensed pursuant to California Vehicle Code Section 4000(a) (''street legal'' vehicles), upon routes on the ground that are marked with a sign that reads ''open route''. A flyer showing the open routes is available upon request.

The public land contained within the previously described 51 sections of land are closed to all motor vehicles in order to protect soil, vegetation, wildlife, wildlife habitat and adjacent private lands, property and land owners. The specific long term goals can be found in the Management Plan for the El Mirage Cooperative Management Area (approved August 1990).

DATES: This closure order shall go into effect after publication in the Federal Register. This action will be reviewed in the context of overlapping management goals relating to route designation in the described area. If needed, the closure will be resubmitted within one year of this publication.

SUPPLEMENTARY INFORMATION: This action is being taken as an interim measure until the aforementioned problems are resolved and/ or the routes of travel on the public land within the 51 sections of land described are designated through the California Desert District's route designation process.

PENALTIES: Any person who fails to comply with this closure order may be subject to a fine of up to $100,000.00 or imprisonment of up to 12 months, or both.

FOR FURTHER INFORMATION CONTACT: Barstow Resource Area Manager or the El Mirage Project Manager, 150 Coolwater Lane, Barstow, California, 92311 or call (619) 255–8700.

Dated: June 3, 1996.

Tim Read,

BLM Barstow Area Manager.

[FR Doc. 96–18223 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–43–P

[OR–094–06–6110–00–FLOD: GP6–0217]

Temporary Closure of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of Public Lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including recreation, camping, shooting, hiking and sightseeing, from August 15, 1996 through September 30, 1996. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this temporary closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 16 S., R. 7 W.
Sec. 19: SE¼SE¼, excluding the right-of-way of Oregon State Highway 36

Containing approximately 36 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the contractor authorized to maintain and repair the Lake Creek Falls Fish Ladder and their subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to provide for public safety, facilitate repair and maintenance of the fish

ladder and the protection of property and equipment during the mobilization, construction, repair and de-mobilization phases of the Lake Creek Falls Fish Ladder maintenance and repair project.

DATES: This closure is effective from August 15, 1996 through September 30, 1996.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P. O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Terry Hueth, Coast Range Area Manager, Eugene District Office, at (541) 683–6989.

Dated: July 10, 1996.

Howard J. Hunter,

Acting Coast Range Area Manager.

[FR Doc. 96–18245 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–33–P

[NV–030–96–1992–02, N36–96–001P]

Notice of Open-House and Extension of Comment Period for the Alta Gold Company Olinghouse Environmental Impact Statement; Nevada

AGENCY: Bureau of Land Management, Carson City District Office.

SUMMARY: The Carson City District Office of the Bureau of Land Management is directing the preparation of an Environmental Impact Statement to be produced by a third-party contractor on the impacts of the proposed Plan of Operations for development of the Olinghouse Gold Mine, an open pit, cyanide heap leach gold mine operated by Alta Gold Company, in Washoe County, Nevada. The original Notice of Intent to Prepare an Environmental Impact Statement was published in the Federal Register, 61 FR 30091, June 13, 1996.

EFFECTIVE DATES: A public scoping open-house will be held August 8, 1996, from 5 p.m. to 8 p.m., at the Fernley Town Complex, 595 Silver Lace Boulevard, Fernley, Nevada to allow the public an opportunity to identify issues and concerns to be addressed in the Environmental Impact Statement. Representatives of the Bureau and Alta Gold Company will be available to answer questions. Additional scoping meetings may be held as appropriate. Written comments on the Plan of Operations and the scope of the Environmental Impact Statement will be accepted until August 23, 1996.

FOR FURTHER INFORMATION CONTACT: Comments on the proposed Olinghouse Mine Project may be sent to: District Manager, Bureau of Land Management, 1535 Hot Springs Road, Carson City, NV 89706. Attn: Olinghouse Project Manager.

For additional information, write to the above address or call Terri Knutson at (702) 885–6156.

Dated: July 11, 1996.

John O. Singlaub,

Carson City District Manager.

[FR Doc. 96–18246 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–HC–P

[CA–010–1220–00]

Meeting of the Bakersfield Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Bakersfield Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (public law 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Bakersfield District Resource Advisory Council will meet in Mammoth Lakes, California.

DATES: August 1–2, 1996.

ADDRESSES: Sierra Nevada Inn, The Mountain View Room, 164 Old Mammoth Road, Mammoth Lakes, California.

SUPPLEMENTARY INFORMATION: The Bakersfield Resource Advisory Council is a 12 member council appointed by the Secretary of the Interior to give counsel and advice regarding planning and management of public land resources to the District Manager of the Bureau of Land Management Bakersfield District. The Council will meet on Thursday, August 1, beginning at 9 a.m., and Friday, August 2, beginning at 8 a.m. Bureau of Land Management Acting Director Mike Dombeck and BLM–California State Director Ed Hastey will meet with the Council on Thursday morning. The rest of the agenda will consist of the Council planning for its future role now that it has completed its assignment of writing standards and guidelines for grazing on public land. A public comment period is scheduled for 1 p.m. Friday, August 2, at which time the public may discuss any public land issue. Written comments will also be accepted at the meeting, or at the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 805–391–6010.

Dated: July 11, 1996.

John Bogacki,

Acting District Manager.

[FR Doc. 96–18248 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–40–M

[WY–030–1020–00]

Notice of Intent To Conduct a Planning Review and Request for Public Participation Concerning a Travel Management Plan for the Shirley Mountain Area

SUMMARY: The Bureau of Land Management (BLM), Great Divide Resource Area, Rawlins, Wyoming, is inviting the public to identify issues and concerns to be addressed in a review of the existing road system and vehicular use management decisions for the Shirley Mountain Area.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain further information or request to be placed on the Rawlins BLM District mailing list by contacting John Spehar, Project Coordinator, at the Great Divide Resource Area Office, Bureau of Land Management, 1300 North Third Street, Rawlins, Wyoming 82301, telephone (307) 328–4200.

SUPPLEMENTARY INFORMATION: A review of the Shirley Mountain Area is needed to evaluate the adequacy of the existing road system and vehicular use management decisions for the area. This planning review will determine whether:

—The existing management decisions in the Great Divide Resource Management Plan (RMP) provide for an appropriate level of resource protection.

—Management actions and alternatives that may be considered are in conformance with existing decisions in the Great divide RMP.

—An amendment to the great Divide RMP will be necessary.

The National Environmental Policy Act (NEPA) environmental analysis process will be used in conducting the planning review and in making the above determinations for the area. The appropriate NEPA document, either an environmental assessment (EA) or an Environmental Impact Statement (EIS), if the EA results in a finding of significant impacts, will be prepared to document the review and its results.

The planning review will include opportunities for public participation. These will be announced through Federal Register notices, media news releases or mailings. A tour showing some of the problem roads in the Shirley Mountain Area will be

conducted during the summer of 1996. The public will be invited to one or more meetings to discuss:

—Problems, conflict, concerns, and planning issues in the review area.
—Potential management options.

If the planning review results in the need to amend the Great Divide RMP, other notices, mailings, or news releases will announce a 30-day comment/protest period on the amendment proposal.

Dated: July 15, 1996.

Alan R. Pierson,

State Director.

[FR Doc. 96–18239 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–22–M

[MT–922–1310–06–P; NDM 72399]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease NDM 72399, McKenzie County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as contained in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: June 27, 1996.

Karen L. Carroll,

Chief, Fluids Adjudication Section.

[FR Doc. 96–18222 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–DN–P

[CO–950–1430–01; COC–54878]

Public Land Order No. 5195; Withdrawal of National Forest System Land for the Hoosier Ridge Research Natural Area: Colorado; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects Public Land Order No. 7195; 61 FR 24806–24807, published May 16, 1996, as FR Doc. 96–12322.

On page 24806, third column, under T. 8 S., R. 77 W., halfway down the column, line which reads ''Thence approximately S. 82° W., 2843 ft.'' is hereby corrected to read ''Thence approximately S. 82° W., 2943 ft.''

Jenny L. Saunders,

Realty Officer.

[FR Doc. 96–18230 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–JB–P

[CO–930–1430–01; COC–39555]

Proposed Transfer of Jurisdiction; Opportunity for Public Meeting; Colorado

AGENCY: ''Bureau of Land Management, Interior.

ACTION: ''Notice.

SUMMARY: The U.S. Park Service requests the transfer of Administrative Jurisdiction of 442.25 acres of Federal mineral interest to the National Park Service for management as part of the Florissant Fossil Beds National Monument. This notice closes these mineral interests to location and entry under the mining laws for up to two years. Since this mineral interest is in lands already located within the Monument, transfer to the Park Service would make the entire Monument subject to Park Service management.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before October 16, 1996.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On June 24, 1996, the Secretary of Interior approved an application to close the Federal mineral interest and to permanently transfer this interest to the Park Service in the following described lands:

Sixth Principal Meridian

Florissant Fossil Beds National Monument

T. 13 S., 70 W.,
  Sec. 18, Lot 2;
  Sec. 19, NW¼NE¼;
  Sec. 30, NE¼, NE¼SW¼, and N½SE¼.
T. 13 S., R. 71 W.,
  Sec. 23, S½NE¼.

The areas described aggregate approximately 442.25 acres of reserved mineral interest in Teller County.

The purpose of this action is to transfer the Federal Mineral interest to become a part of the Florissant Fossil Beds National Monument.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the Federal Register, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the transfer is approved prior to that date. During this period the Park Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 96–18229 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–JB–P

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. July 9, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and of the segregation survey of the Mammoth and Rubey lodes, and the subsidivion of sections 10 and 15, T. 1 N., R. 15 E., Boise Meridian, Idaho, Group No. 919, was accepted, July 9, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: July 9, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–18244 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–66–M

[NM–952–06–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on August 10, 1996.

New Mexico Principal Meridian, New Mexico:

T. 18 N., R. 17 W., for Group 844 NM. T. 26 N., 14 W., T. 28 N., R. 14 W., T. 28 N., R. 15 W., T. 27 N., R. 17 W., T. 28 N., R. 17 W., T. 27 N., R. 16 W., and T. 28 N., R. 16 W., for Group 870 NM. T. 21 N., R. 19 W., T. 17 N., R. 20 W., and T. 21 N., R. 18 W., for Group 871 NM. T. 23 N., R. 10 E., for Group 925 NM, and supplemental plat for T. 23 N., R. 10 E.

A person or party who wishes to protest against any of these surveys must file a written protest with the State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: July 9, 1996.

Kelley Williamson, Jr.,

Acting Chief Cadastral Surveyor For New Mexico.

[FR Doc. 96–18256 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–FB–P

Minerals Management Service

Safety and Environmental Management Program (SEMP) on the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The MMS has postponed its decision regarding the mandatory or voluntary adoption of the SEMP by OCS lessees. The MMS does not have sufficient information to determine whether the voluntary adoption of SEMP currently achieves the regulatory goals of the MMS. We will continue assessing the oil and gas industry's progress in implementing SEMP and will make a determination on this program in mid-1997.

DATES: Comments may be submitted at any time.

ADDRESSES: We welcome your comments on MMS' SEMP concept, the American Petroleum Institute's Recommended Practice 75, OCS safety and environmental protection issues in general, implementation strategies, and related matters. Send comments to Henry Bartholomew; Deputy Associate Director for Operations and Safety Management; Minerals Management Service; Mail Stop 4600; 381 Elden Street; Herndon, Virginia 22070–4817.

FOR FURTHER INFORMATION CONTACT: Jeff Wiese, SEMP Manager; Mail Stop 4800; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817, telephone (703) 787–1591.

SUPPLEMENTARY INFORMATION:

What Is SEMP?

The SEMP is a safety systems management model designed around offshore oil and gas exploration and development activities. This concept is currently embodied in a publication of the American Petroleum Institute (API) known as Recommended Practice 75 (RP75). This document is available from the API: they can be reached by phone at (202) 682–8375.

How Did We Get to This Point?

The MMS introduced its SEMP concept in the Federal Register on July 2, 1991 (56 FR 30400). In response, OCS operators requested that they be given an opportunity to further develop SEMP and a chance to demonstrate that they could voluntarily adopt it. The MMS joined with a broad-based industry committee to refine the SEMP concept under the aegis of the API. In May 1993, the API published RP75 as its response to SEMP. On June 30, 1994, the MMS published a notice in the Federal Register (59 FR 33779) in which it said that RP75 generally captured the agency's perception of what a SEMP should contain. At that time, the MMS committed to a 2-year moratorium on regulatory activity related to SEMP during which time it would closely monitor the voluntary adoption of RP75 by OCS operators. The observation period officially expires this summer.

Why Is the MMS Promoting SEMP?

The MMS and its predecessors have developed a sound regulatory program to protect the public's interests in the exploration and development of OCS oil and gas over the course of more than a quarter century. This program is based, in large measure, on standards and recommended practices developed in association with OCS stakeholders that delimit how a ''safe and prudent'' operator would conduct its business. This regulatory program has historically focused on hardware and engineering solutions. It has been, as well, fairly prescriptive.

The SEMP concept was created to address the role of human and organizational error to accidents. By some estimates, human and organizational factors lie at the root cause of up to eighty percent of all accidents.

Through SEMP, the MMS is seeking alternative ways to enhance current efforts to protect people and the environment during oil and gas exploration and production activities taking place on the U.S. OCS. The MMS undertook this initiative following two separate, but related, studies which indicated that OCS operators were led by the traditional, prescriptive regulatory approach of the MMS to focus more on compliance with existing rules than in systematically identifying and mitigating all risks posed by their operations. Implementation of SEMP squarely places the responsibility for protection of people, facilities, and the environment on the shoulders of OCS operators.

How Well Is SEMP Being Implemented?

To gauge how well OCS operators were implementing SEMP, as well as to identify areas in which the agency could assist them in this endeavor, the MMS joined with the API, the Independent Petroleum Association of America, the Offshore Operator's Committee, and the National Ocean Industries Association to conduct an annual series of surveys. The baseline implementation survey was conducted in January 1995 and a follow-up survey was performed in January 1996. About 95 percent of all OCS operators representing over 99 percent of total OCS oil and gas production (over 3.5 million barrels of oil equivalent per day) responded to this last survey.

Collectively, these surveys have shown that OCS operators—as a whole—are well on their way to implementing SEMP plans that they have been developing during the past 2 years. If progress similar to this is maintained, the MMS expects that many of these companies' SEMP plans will be fully implemented in the field within the next 1–2 years.

Has the MMS Fully Evaluated the Voluntary Adoption Approach?

No. Because the MMS strongly believes that the real value of SEMP will be derived from field-level implementation of SEMP plans, we believe it will be another year before we have enough evidence to ascertain whether this regulatory approach will be a success. We have every reason to believe it will be if OCS operators continue to develop and implement their SEMP plans with due diligence.

What's Next?

The MMS will defer judgment on how successful voluntary adoption of RP75 has been for 1 year. We have, however, identified a few goals that we can pursue collectively with OCS operators during this time:

1. Work to broaden voluntary implementation to the few remaining holdouts;
2. Accelerate, where feasible, field-level implementation of SEMP plans;
3. Continue to promote greater understanding of SEMP through cooperative efforts such as the joint workshops held during 1995;
4. Begin to develop reliable, commonly-defined measures of performance; and,
5. Further explore regulatory reform for companies that conscientiously develop, implement, and undertake to improve SEMP plans.

Also during this time, the MMS will continue its efforts to independently assess implementation of SEMP by meeting with OCS operators on a voluntary basis to discuss their SEMP plans and by talking to field-level personnel during routine inspections we conduct of their offshore facilities.

(Authority: U.S.C. 1334)

Dated: June 26, 1996.

Carolita U. Kallaur,

Acting Director, Minerals Management Service.

[FR Doc. 96–18267 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

General Management Plan/ Environmental Impact Statement Rock Creek Park, D.C.; Notice of Intent

In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies for the General Management Plan (GMP) for Rock Creek Park, Washington, D.C.

The GMP/EIS will evaluate a range of alternatives which address cultural and natural resources protection, socioeconomic concerns, traffic circulation, and visitor use. Studies will also be done on transportation issues and the management of the park as a national scenic byway.

Public involvement will be a key component in the preparation of the general management plan and environmental impact statement.

The NPS will be holding a public scoping meeting on July 24, 7–9 p.m. at the National Zoo where you will have an opportunity to present your ideas, questions, and concerns directly to the planning team. The meeting will be held in the auditorium of the visitor center (formerly the Education Building). Enter the Zoo at the Connecticut Avenue entrance and park in Lot A (parking is free).

The purpose of these meetings is to determine the content that should be addressed in the GMP/EIS. Individuals unable to attend the scoping meetings may request information from the Superintendent of Rock Creek Park at the address listed below.

You can also get the latest information on the general management plan by being on our mailing list. Please call the GMP Info Line (202–282–1008) for a recorded message and, if desired, to leave your comments; or by checking our homepage on the Internet at the following address: http://www.nps.gov/rocr/gmpnewsletter1.

The draft GMP/EIS are expected to be completed and available for public review by summer, 1997. After public and interagency review of the draft document, comments will be considered and a final EIS will be prepared for release by winter, 1998, which will be followed by a record-of-decision. The responsible official is Robert G. Stanton, Field Director, National Capital Area, NPS. Written comments should be submitted to the Superintendent of Rock Creek Park, 3545 Williamsburg Lane, NW, Washington, DC 20008–1207.

Dated: July 12, 1996.

Richard S. Powers,

Acting Field Director, National Capital Area.

[FR Doc. 96–18226 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 7:30 p.m. (PST) on Wednesday, August 14, 1996 at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, California to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore.

The Advisory Commission was established by Public law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Naomi T. Gray
Mr. Michael Alexander
Ms. Lennie Roberts
Ms. Sonia Bolaños
Mr. Redmond Kernan
Mr. Merritt Robinson
Mr. John J. Spring
Mr. Joseph Williams
Ms. Amy Meyer, Vice Chair
Dr. Howard Cogswell
Mr. Jerry Friedman
Ms. Yvonne Lee
Mr. Trent Orr
Ms. Jacqueline Young
Mr. R.H. Sciaroni
Dr. Edgar Wayburn
Mr. Mel Lane

The main agenda item at this meeting will be possible Advisory Commission action on the Environmental Assessment for Presidio Golf Course Facilities. A presentation the draft environmental assessment on the proposed Presidio Golf Clubhouse and Maintenance Facility was made before the Advisory Commission at the May 15, 1996 Advisory Commission meeting, and public comments were taken at the June 19, 1996 Advisory Commission meeting. The 30-day comment period on this assessment ended on June 21, 1996.

Also on the agenda will be a presentation and Commission discussion on plans for Marine Learning Center at Pier 1 at Fort Mason Center and a presentation on the activities and operations of the GGNRA Special Use Permit office.

The meeting will also contain reports of committees and ad hoc committees, a Presidio General Manager's Report, and a GGNRA Superintendent's Report.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each

meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 556–4484.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: July 12, 1996.

Brian O'Neill,

General Superintendent.

[FR Doc. 96–18236 Filed 7–17–96; 8:45 am]

BILLING CODE 4310–70–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Loan Guarantees to Israel; Notice of Investment Opportunity

The Government of Israel (the ''GOI'') wishes to select managing underwriters for the structuring and sale of U.S. Agency for International Development (''USAID'')-guaranteed loans. The USAID-guaranteed loans have been authorized by Public Law 102–391, and are being provided in connection with Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

The legislation authorizes the guaranty by USAID of up to $10 billion principal amount of loans over a five-year period, with a maximum of $2 billion in loans, offered in one or more tranches, to be guaranteed in each of the five fiscal years. This Notice is in connection with the GOI's selection of managing underwriters for an offering contemplated to be made under the authorization for the current fiscal year.

In order to be considered as a managing underwriter for the proposed transaction, interested parties must demonstrate the requisite financial and technical capabilities by their responses to a Request for Proposals (''RFP''), which will be available from the GOI prior to the offering. Interested parties who wish to receive an RFP, when available, should contact Mr. Eliahu Ziv-Zitouk, Consul and Chief Fiscal Officer, Ministry of Finance of the Government of Israel, 800 Second Avenue, New York, New York 10017 (fax: 212/499–5715).

Selection of underwriters and the terms of the loans are initially subject to the individual discretion of the GOI and thereafter subject to approval by USAID. In order to be eligible for selection as a managing underwriter, an institution must be a member of the National Association of Securities Dealers, and otherwise meet the legal requirements for serving in such role. All firms are encouraged to submit proposals, regardless of ethnic origin, race or gender.

The full repayment of the loans will be guaranteed by USAID. To be eligible for a USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 226 of the Foreign Assistance Act of 1961, as amended. Disbursements under the loans will be subject to certain conditions required of the GOI by USAID as set forth in agreements between USAID and the GOI.

Additional information regarding USAID's responsibilities in this guaranty program can be obtained from the undersigned:

Room 3328 N.S., 2201 C. Street, NW., Washington, DC 20523–0030, Telephone: 202/647–9839.

Dated: July 15, 1996.

Michael G. Kitay,

Assistant General Counsel, Agency for International Development.

[FR Doc. 96–18335 Filed 7–17–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 119–96]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Federal Bureau of Investigation.

The National DNA Index System (NDIS) (JUSTICE/FBI–017) is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e) (4) and (11) has been published in the Federal Register.

In order to comply with 5 U.S.C. 552a(e) (4) and (11), the public must be given a 30-day period in which to comment on new routine use disclosures; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the system before it is implemented. Therefore, the public, the OMB, and the Congress are invited to submit written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Information Resources Management, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building). Comments from the public must be received by August 19, 1996. No further notice will appear in the Federal Register unless comments are received and publication pursuant thereto is deemed appropriate. A proposed rule to exempt the system is also being published in the ''Proposed Rules'' Section of today's Federal Register.

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system of records to OMB and the Congress.

Dated: July 8, 1996.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/FBI–017

SYSTEM NAME:

National DNA Index System (NDIS).

SYSTEM LOCATION:

Federal Bureau of Investigation: FBI Laboratory, U.S. Department of Justice, J. Edgar Hoover Building, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals in this system include persons designated by criminal justice agencies as belonging to one or more of the following groups:

A. *Convicted offenders:* Persons who have been convicted of crimes in Federal, State, and/or local courts where the applicable law permits establishment of a DNA record for the convicted person.

B. *Missing persons and their close biological relatives:* Persons reported missing or whose whereabouts are unknown and sought and their close biological relatives, such as parents, siblings, and children.

C. *Victims:* Persons, living or dead, who have been victims of crimes where the perpetrator of the crime may have

carried DNA of the victim away from the crime scene.

D. *DNA personnel:* Personnel in Federal, State, and/or local criminal justice agencies who perform duties related to or are responsible for DNA records.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following definitions are used in this notice:

A. A DNA *sample* is a body tissue or fluid sample usually a blood and/or buccal sample, that can be subjected to DNA analysis.

B. A DNA *profile* consists of a set of DNA identification characteristics, i.e., the particular chemical form at the various DNA locations (loci), which permit the DNA of one person to be distinguishable from that of another person.

C. A *target DNA profile* is a DNA profile submitted by a criminal justice agency for the purpose of identifying DNA profiles maintained by NDIS which match the target DNA profile.

D. A *target DNA profile search* is a search of appropriate NDIS DNA records for those records with DNA profiles that may match the target DNA profile.

E. *Personally identifiable information* is information such as names, dates of birth, or social security numbers which are normally used to identify individuals. Personally identifiable information, as used in this notice, does not include information derived from the examination of a DNA sample.

F. A DNA *record* includes the DNA profile as well as data required to manage and operate NDIS, i.e., the NDIS Agency identifier which serves to identify the submitting agency; the NDIS Specimen Identification Number; information related to the reliability and maintainability of the DNA profiles; and names of the participating laboratories and DNA personnel associated with DNA profile analyses.

Records in this system do not include DNA samples but do include DNA profiles of persons described under ''Categories of Individuals Covered by the System'' in paragraph A–C. DNA records are input by criminal justice agencies for use by the NDIS. NDIS includes the names of DNA personnel associated with DNA profile analyses, the date after which DNA records from a given DNA analyst can be accepted, and, when applicable, the date after which associated DNA records are not accepted. NDIS does not contain case-related or other personally identifying information about the person from whom the DNA sample was collected.

DNA records are maintained as follows:

1. The Convicted Offender Index, consisting of DNA records from convicted offenders;

2. The Missing Persons Index, consisting of DNA records from missing persons;

3. The Close Biological Relatives Index, consisting of DNA records from close biological relatives of missing persons;

4. The Unidentified Persons Index, consisting of DNA records from recovered living persons (e.g., children who can't and others who can't or refuse to identify themselves), and recovered dead persons (including their body parts and tissues), whose identities are not known;

5. The Victims Index, consisting of DNA records from victims, living or dead, from whom DNA may have been carried away by perpetrators;

6. The Forensic Index, consisting of DNA records from persons whose identities are not known with certainty and who left DNA at the scene of a crime or whose DNA was carried away from it; and

7. The Population File, consisting of DNA profiles intended to represent various population segments found in the United States. The Population File consists of DNA records from individuals whose identities may be: (a) Known to; (b) not known, but determinable under some circumstances by; or (c) not known and not determinable by the criminal justice agency submitting the DNA records to NDIS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 108 Stat. 1796.

PURPOSE(S):

The purpose of this system and the DNA records maintained in the system is to provide a national storage medium for DNA records input by criminal justice agencies. These records can be searched in order to identify DNA associations with a DNA record obtained during an investigation of a crime or a missing person. The system is also maintained for statistical, identification research, and protocol development and quality control purposes.

In addition to DNA records, records about DNA personnel are maintained in the system. The purposes of these DNA personnel records are to control the acceptance of DNA records by NDIS and to facilitate criminal justice agency contracts required to resolve potential DNA matches.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Direct disclosures of NDIS records are made to the Federal, State, and local criminal justice agencies who participate in NDIS. As a result of an NDIS search by a criminal justice agency, the NDIS system analyzes the target DNA profile entered by the search agency and may identify a potential match. Where NDIS identifies a potential match, the matching DNA's records will be disclosed to the criminal justice agencies associated with the match.

2. The Federal statute which authorizes NDIS also provides that the FBI and other criminal justice agencies participating in NDIS may make secondary or indirect disclosures of DNA records:

(A) To criminal justice agencies for law enforcement identification purposes;

(B) In judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

(C) For criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which defendant is charged; or

(D) If personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

Note: Personal information such as names are not found in NDIS. However, operational identifiers such as the Specimen No., Criminal Justice Agency Identifier, and DNA Personnel identifier, are contained in NDIS. Although unlikely, the identity of an individual could, under some circumstances, be ascertained with the disclosure of such numbers for purposes stated in (D) above. This is only possible when access to a criminal justice agency's records is provided to the holder of the operational identifiers. Therefore, to ensure that such associations are not made, these operational numbers will be removed before disclosure for these purposes.

3. A record may be disclosed from this system of records to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in NDIS is stored electronically for use in a computer environment.

RETRIEVABILITY:

The primary method for retrieving information from NDIS is the target DNA profile search described in the routine use disclosure provisions of this notice.

The NDIS Custodian may retrieve records based on: the DNA profile, the NDIS Agency identifier, the NDIS Specimen Identification Number, and/or DNA personnel identifier. Criminal justice agencies with direct access to NDIS may retrieve their records by the NDIS Agency identifier, NDIS Specimen Identification Number, or DNA personnel identifier but only to inspect, modify, or delete their own DNA records.

Since NDIS records contained in NDIS do not include personal identifiers of the individuals from whom the DNA samples were collected, retrieval by personal identifiers of these record subjects is not possible.

SAFEGUARDS:

All records in NDIS are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to those with a need-to-know to perform their official duties, using locks and alarm devices, and encrypting data communications.

No personally identifiable information about individuals who provided DNA samples is maintained in NDIS. Therefore, names and personally identifiable information of NDIS DNA records cannot be disclosed directly from NDIS. (NDIS does, however, maintain the names of NDA personnel.)

NDIS will disclose to a criminal justice agency the DNA records of another criminal justice agency only when there is a potential DNA match. Any additional disclosures of personally identifiable information or other case-related data are made directly by the criminal justice agencies from their own files and records, not from NDIS.

Although ostensibly devoid of personally identifiable information, DNA records in NDIS contain an NDIS Specimen Identification Number, NDIS Agency identifier, and a DNA personnel identifier for law enforcement and/or general operational purposes. Since it is possible, in some circumstances, to use those numbers together with the appropriate agency's own records to identify the individuals represented by the DNA records, additional precautions are taken.

The precautions involve removal of the Specimen Identification Numbers, NDIS Agency identifiers, and DNA personnel identifiers, prior to disclosure pursuant to the 2(D) routine use. (See the ''Routine Uses of Records Maintained in the System'' section of this notice.) Thus, NDIS will periodically generate DNA profile data sets, consisting of anonymous DNA profiles, for population statistics databases, for identification research and protocol development purposes, or for quality control purposes.

Criminal justice agencies are prohibited from submitting a DNA record for inclusion in the NDIS Population File for investigative purposes. The only target DNA profile searches conducted against the Population File are those necessary to eliminate duplicate DNA profiles representing the same individual.

Finally, criminal justice agencies with direct access to NDIS must agree to adhere to national quality assurance standards for DNA testing, undergo semi-annual external proficiency testing, and restrict access to DNA samples and data. The NDIS will not accept DNA analyses from those agencies and/or DNA personnel who fail to comply with these standards and restrictions; and the NDIS Custodian is authorized to restrict access to and delete any DNA records previously entered into the system.

RETENTION AND DISPOSAL:

DNA records generated by criminal justice agencies, together with the personal identifying information of DNA personnel, shall be retained in NDIS as long as they are substantiated by internal records of the submitting agency and are permitted either by consent, by judicial/criminal justice authority, or by Federal, State, or local law. Records may be deleted by the originating criminal justice agency or by other Federal, State, or local authorities who are responsible for deleting any records that are no longer permitted or appropriate for retention in NDIS. DNA records submitted to NDIS and then found to be inaccurate shall either be modified to achieve accuracy or deleted from NDIS by the submitting agency.

Agencies granted access to NDIS are required to establish and maintain a system of controls to ensure that continued use of their DNA records in NDIS is lawfully permitted. Such a system of controls shall ensure that DNA records in NDIS which are authorized by the consent of individuals, for example, are retained in NDIS only for the duration and within the scope of the consent.

The NDIS Custodian has the authority to determine that certain DNA records in NDIS should be deleted or, alternatively, suspended from use for a period of time determined appropriate by the NDIS Custodian. The criminal justice agencies whose records are affected by a determination to delete or suspend records in NDIS shall be notified of this determination and the nature of the deletion or suspension. The NDIS Custodian may subsequently decide to either restore or delete the suspended records, and shall notify the affected agency of this subsequent determination.

The DNA personnel identifier for a single individual is deleted from NDIS only after all DNA records associated with that individual are deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, c/o National DNA Index System Custodian, FBI Laboratory, U.S. Department of Justice, J. Edgar Hoover Building, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001.

NOTIFICATION PROCEDURE:

None. This system of records has been exempted from subsections (d) and (e)(4)(G) pursuant to subsection (j)(2) of the Privacy Act, and thus is exempt from the notification provision.

RECORDS ACCESS PROCEDURE:

This system of records has been exempted from subsection (d) and (e)(4)(H) pursuant to subsection (j)(2) of the Privacy Act, and thus is exempt from its access provisions. NDIS does not retain information that would allow the NDIS Custodian, independent of the agency which originated the DNA record, to personally identify the record by name or other personal identifier. However, subject to applicable Federal, State, and local law and procedures, the following alternative procedures are available by which an individual may request access to records in NDIS.

1. Subjects of DNA Records:

a. Convicted Offender Records: The individual may contact the Federal, State or local authority (the authorized agency) which ultimately received the collected DNA sample to obtain instructions on how to access his/her record. The authorized agency has the DNA record, if one exists, including information as to whether the DNA record has been submitted to NDIS. Only the authorized agency would have information sufficiently specific to

permit retrieval of the record from its files by name or other personally identifiable information. The authorized agency may also retrieve the DNA record, if any, that was submitted to NDIS, once locally specified requirements are met.

In addition, where a convicted offender is relocated voluntarily or involuntarily to a criminal justice agency (i.e., penal institution or parole and probation authorities) for custodial or supervisory purposes in another State or jurisdiction, the DNA record may be created by the new host criminal justice agency or other State (or Federal) authority from a DNA sample collected from the Convicted Offender at the new host criminal justice agency or other State (or Federal) authority. In such circumstances, the individual may contact such agency or authority for access instructions.

b. Close Biological Relatives of Missing Persons and Victims; Living Victims; and Missing Persons Who Have Been Located: These individuals must contact the criminal justice agency (Federal, State, or local) which collected and processed the DNA sample to generate the DNA record. The criminal justice agency can then advise the individual about procedures for access to the DNA record. Such agency may also retrieve the DNA record, if any, that was submitted to NDIS, once locally specified requirements are met.

2. Records of DNA Personnel: These individuals may write to the Federal, State, or local criminal justice agency by which they are or were employed.

3. FBI generated records: The subject of an FBI-generated DNA record may address a Freedom of Information/Privacy Act (FOIA/PA) request to the Director, FBI, at the address given at the end of this paragraph. DNA personnel employed by the FBI may also address their requests to the system manager; however, all the information in NDIS concerning DNA personnel is also contained in the FBI's Central Records System (CRS), which may contain additional information. To request access to the CRS, DNA personnel may address an FOIA/PA request to the Director, FBI, U.S. Department of Justice, J. Edgar Hoover Building, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001.

CONTESTING RECORDS PROCEDURE:

This system of records has been exempted from subsections (d) and (e)(4)(H) pursuant to subsection (j)(2) of the Privacy Act, and is thus exempt from its amendment and correction provisions. However, subject to applicable Federal, State, and local laws and procedures, the following alternative procedures are available by which an individual may contest his/her records:

1. All Subjects of DNA Records: The requester must follow the same procedures for contesting records as those outlined under ''Record Access Procedures.'' In addition, the requester should be aware of the following:

a. DNA records submitted to NDIS and contested on the basis of inaccurate information must be resolved with the criminal justice agency that submitted the DNA record NDIS. If a contested DNA record is found to be inaccurate by the criminal justice agency submitting the DNA record, such agency shall correct the inaccurate DNA record by either amending or deleting the record.

b. DNA records submitted to NDIS and contested on the basis of the authority to retain the DNA record must be resolved with the criminal justice agency that submitted the contested DNA record. If such agency determines that the contested DNA records should not be included in NDIS, such agency must delete the contested DNA record.

2. Records of All DNA Personnel: DNA personnel must follow the same procedures for contesting records as those outlined under ''Record Access Procedures.''

RECORD SOURCE CATEGORIES:

DNA records in NDIS are received from Federal, State, and local criminal justice agencies. These DNA records may be derived from DNA samples obtained by Federal, State, and local and criminal justice agencies or their agents (public or private).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system of records from subsection (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules are being promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e); and are being published in the Federal Register.

[FR Doc. 96–18328 Filed 7–17–96; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL INSTITUTE FOR LITERACY

[CFDA No. 84.251]

Literacy Leader Fellowship Program; Notice Inviting Applications; Correction

AGENCY: The National Institute for Literacy.

ACTION: Notice Inviting Applications for the Literacy Leader Fellowship Program.

Correction

In notice document 96–14720 appearing on page 29575 in the issue of Thursday, June 11, 1996 in the third column the following corrections are made to the Estimated Range and Estimated Average Size of Awards.

Estimated Range of Awards: $30,000–$40,000.

Estimated Average Size of Awards: $30,000.

Sharyn Abbot,

Executive Officer, National Institute for Literacy.

[FR Doc. 96–18186 Filed 7–17–96; 8:45 am]

BILLING CODE 6055–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Pension Plan Reports: OMB 3220–0089. Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after

June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained).

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) the current status of railroad employer pension plans and whether such an employer pension plan causes a reduction to the supplemental annuity; (b) the amount of the employer private pension being paid to the employee; (c) whether or not the railroad employer pension is based on a collective bargaining agreement, and; (d) whether the employer pension plan continues when the employer status under the RRA changes.

The RRB currently utilizes Form(s) G–88p (Employer's Supplemental Pension Report), G–88r (Request for Information About New or Revised Pension Plan), and G–88r.1 (Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan), to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory. Minor editorial changes are being proposed to all of the forms in order to incorporate language required by the Paperwork Reduction Act of 1995. Also, at the request of railroad employers, minor textual changes are being proposed to Form G–88p.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (Min)	Burden (Hrs)
G–88p	2,200	8	293
G–88r	25	10	4
G–88r.1	15	10	3
Total	2,240		300

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–18224 Filed 7–17–96; 8:45 am]

BILLING CODE 7905–01–M

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Survivor Death Benefits: OMB 3220–0031 Under Section 6 of the Railroad Retirement Act (RRA), lump-sum death benefits are payable to surviving widow and widowers, children and certain other dependents. Lump-sum death benefits are payable after the death of a railroad employee *only* if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depend on whether the employee was ''insured'' under the RRA at the time of death. If a deceased employee was not so insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for.

The RRB currently utilizes Form(s) AA–11a (Designation for Change of Beneficiary for Residual Lump-Sum), AA–21 (Application for Lump-Sum Death Payment and Annuities Unpaid at Death), G–131 (Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment), and G–273a (Funeral Director's Statement of Burial Charges), to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits.

In order to implement a presumed Electronic Funds Transfer (EFT) policy, a new section that requests information about an applicant's financial institution is being proposed to Form AA–21. A similar section is being proposed to Form G–273a in order to allow for EFT payments directly to the funeral director's financial institution. Additional changes being proposed to the G–273a include the addition of a clarification question related to billing by the responsible funeral home, the deletion of two questions deemed to be no longer necessary, and some reformatting of questions remaining from the current approved version. In addition, minor editorial changes are being proposed to all of the forms in order to incorporate language required by the Paperwork Reduction Act of 1995.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (minutes)	Burden (hours)
AA–11a	400	10	67
AA–21 (with assistance)	6,000	32	3,200
AA–21 (without assistance)	6,000	42	4,200
G–131	600	5	50
G–273a	9,600	12	1,920
Total	22,600	.....	9,437

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–18225 Filed 7–17–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 22065; File No. 812–9918]

Notice of Application for an Order Under the Investment Company Act of 1940 (''1940 Act'')

July 11, 1996.

APPLICANTS: Golden American Life Insurance Company (''Golden American''), Separate Account B of Golden American Life Insurance Company (''Separate Account B''), Separate Account D of Golden American Life Insurance Company (''Separate Account D''), The GCG Trust (''Trust''), and Directed Services, Inc. (''Services'').

RELEVANT 1940 ACT SECTIONS AND RULE: Order requested under Sections 6(c) and 17(b) of the 1940 Act, granting exemption from Section 17(a) of the 1940 Act, and under Sections 6(c) and 17(d) of the 1940 Act, and Rule 17d–1 thereunder, permitting certain transactions related to a reorganization.

SUMMARY OF APPLICATION: Applicants seek an order to permit: (1) the net assets of Separate Account D to be transferred to a newly created division of Separate Account B (''Division''); and (2) the simultaneous exchange of the net assets held by the Division to the Managed Global Series (''Series''), a corresponding, newly created series of the Trust, for shares of the Series, all as part of the reorganization of Separate Account D into Separate Account B (''Reorganization'').

FILING DATE: The application was filed on December 29, 1995, and was amended on June 25, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Marilyn Talman, Esq., Golden American Life Insurance Company, 1001 Jefferson Street, Suite 400, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Golden American, a Delaware corporation, is a stock life insurance company. Golden American is authorized to do business in the District of Columbia and all states except New York. Golden American is a wholly owned indirect subsidiary of Bankers Trust Company.[1]

2. Golden American created Separate Account B and Separate Account D (collectively, ''Accounts'') as ''separate accounts'' within the definition of Section 2(a)(37) of the 1940 Act. Currently, the Accounts serve as funding media for certain variable annuity contracts (''Contracts'').

3. Separate Account B is an unit investment trust registered under the 1940 Act, and is governed by the laws of Delaware. Separate Account B presently has fifteen investment divisions which invest primarily in separate investment series of the Trust having distinct investment objectives and policies.

4. Separate Account D is registered with the Commission as an open-end management investment company, and also is governed by the laws of Delaware. The Managed Global Account is the sole division of Separate Account D.

5. The Trust is registered with the Commission as an open-end management investment company, and is organized under the laws of Massachusetts. It consists of twenty-seven series, fifteen of which are presently operational. Shares of each of these series are sold to Separate Account B, among others, and serve as the investment medium for Contracts allocated through insurance company separate accounts. In addition, shares of the Trust's series may be sold to certain qualified pension and retirement plans.

6. Services, a New York corporation, is registered with the Commission as an investment adviser and broker-dealer, and is a member of the National Association of Securities Dealers, Inc. Services is a wholly owned subsidiary of Bankers Trust Company, the indirect parent of Golden American. Services provides investment management services to both Separate Account D and the Trust. Services serves as manager of The Managed Global Account and has retained Warburg, Pincus Counsellors, Inc. (''Warburg, Pincus'') as portfolio manager of The Managed Global Account. Services also serves as the distributor of shares of the Trust and of the Contracts. Services serves as distributor of the Trust without renumeration, but may receive distribution fees in connection with the distribution of the Contracts.

7. Applicants propose that, subject to the approval of the owners of Contracts (''Contract Owners'') having an interest in Separate Account D, the portfolio assets of Separate Account D, a managed separate account, will be transferred to a newly-created division of Separate Account B, a unit investment trust. Simultaneously, the Division will exchange its net assets for shares of the Series, all as part of the proposed Reorganization of Separate Account D into Separate Account B.

8. More specifically, the assets of Separate Account D, as well as any unsatisfied liabilities incurred by Separate Account D prior to the close of business on the business day before the closing date, will be transferred to the Division, and from there to the Series.

[1] Under the terms of a stock purchase agreement dated May 3, 1996 between Equitable of Iowa Companies (''Equitable of Iowa'') and Whitewood Properties Corp. (''Whitewood''), Equitable of Iowa has agreed, subject to certain conditions and regulatory approvals, that it or an affiliate will acquire 100% of BT Variable, Inc., a wholly owned subsidiary of Whitewood (''Acquisition''). BT variable, Inc. is the corporate parent of Golden American and Services. It currently is anticipated that the Acquisition will be completed on August 30, 1996. Because the Acquisition may be deemed to terminate Separate Account D's management and portfolio management agreements, the Board of Governors of Separate Account D will soon distribute proxy materials soliciting contract owner approval of a management agreement and a portfolio management agreement to become effective following the Acquisition.

The number of shares of the Series transferred to the Division shall be determined by dividing the value of the assets transferred, as of the close of business on the business day before the closing date, by the initial per share value of the shares of the Series, which shall be determined by the officers of the Trust. Applicants state that Contract Owners will continue to have the same Contract unit values and numbers of units in the Division as they had in The Managed Global Account of Separate Account D prior to the Reorganization.

9. Following the Reorganization, for so long as required by the Commission, voting rights exercised by Contract Owners with value allocated to Separate Account B will consist of the right to instruct Golden American on the exercise of voting interests in the Trust. In contrast, Contract Owners with value allocated to Separate Account D would vote directly on matters. Applicants represent that this difference will not, as a practical matter, diminish Contract Owners' existing voting rights.

10. Applicants state that the investment objective, policies, and restrictions on the Series will not differ in any material respect from that of Separate Account D. Therefore, neither of the Accounts nor the Trust will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets. Further, Applicants do not anticipate that there will be any need to liquidate any portfolio securities held by Separate Account D in order to complete the Reorganization.

11. As a series of the trust, the Series will be managed in the same manner as the other series of the Trust, except as noted below. Ultimate management responsibility for the Series is vested in the Trust's Board of Trustees, which consists of the same persons who serve on Separate Account D's Board of Governors. Applicants presently anticipate that four of the five persons currently serving as members of Separate Account D's Board of Governors and the Trust's Board of Trustees will continue to serve on the Trust's Board of Trustees following the Reorganization. In addition, the same officers presently manage the Trust and Separate Account D.

12. Bankers Trust Company currently serves as custodian of the portfolio assets of The Managed Global Account of Separate Account D. It furnishes similar custodial services to the Trust. Ernst & Young provides auditing services to Golden American and the Accounts, as well as the Trust. Services serves as the distributor of the Contracts and the shares of the Trust. These service relationships are not expected to change as a result of the Reorganization.

13. In addition, following the Reorganization, Services will continue to serve as distributor of shares of the Trust, including shares of the Series.

14. Service's management agreement with Separate Account D and Warburg, Pincus' portfolio management agreement with Services and Separate Account D, may terminate upon completion of the transactions contemplated by the Reorganization. Under a management agreement with the Trust as to the Series, and subject to the supervision and approval of the Trust's Board of Trustees, it is anticipated that Services will provide management services on terms that are substantially identical to those of the present management agreement with Separate Account D. It also is anticipated that Warburg, Pincus will furnish portfolio management services to the Series pursuant to a portfolio management agreement with the Trust and Services, the terms of which are substantially identical to those of the present portfolio management agreement with Services and Separate Account D that is in effect at the time of the Reorganization.

15. Applicants state that the Reorganization will benefit Contract Owners that currently have interests in Separate Account D, in that they will be invested in a more viable investment vehicle, rather than continuing to be managed as a separate, smaller portfolio of assets allocated to Separate Account D.

Because the Trust, including the Series, also may be used as the funding vehicle for other insurance products currently offered to or to be offered by Golden American or other insurers, it is anticipated that this flexibility could lead to greater asset size of the Series than would be realized through Separate Account D. The Trust, Separate Account B, and Contract Owners, according to Applicants, also may benefit by increased opportunities for investment and broader diversification of assets.

16. Golden American or Services will assume all costs to be incurred in effecting the Reorganization. Applicants represent that the overall level of fees and charges borne by Contract Owners with an interest in Separate Account D will be no greater immediately after the Reorganization than immediately before it.

17. Applicants state that Contract Owners having an interest in Separate Account D will be fully informed of the terms of the Reorganization through proxy materials. Golden American's Board of Directors has authorized the restructuring of Separate Account D into a division of Separate Account B, and has approved the plan governing the proposed Reorganization. The Board of Governors of Account D also has authorized the Reorganization. Finally, the Board of Trustees of the Trust has approved the Reorganization, and has authorized all actions necessary to effect the Reorganization.

Applicants' Legal Analysis

Sections 6(c), 17(a), and 17(b)

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to continually or unconditionally grant an exemption from any provision, rule, or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 17(a) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly from selling or purchasing any security or other property to or from such investment company.

3. Section 2(a)(3)(C) of the 1940 Act defines an ''affiliated person'' of another as ''the person directly or indirectly controlling, controlled by, or under common control with, such other person.'' In addition, under Section 2(a)(3)(E) of the 1940 Act, the investment adviser to an investment company is an ''affiliated person'' of such company.

4. According to Applicants, each Applicant may be deemed to be an affiliated person of each other or an affiliated person of an affiliated person under Section 2(a)(3) of the 1940 Act, and the Reorganization may be deemed to involve one or more purchases or sales of securities or other property between and among Applicants involved in the Reorganization. Section 17(a), therefore, may prohibit the transactions required to effect the Reorganization.

5. Section 17(b) of the 1940 Act provides that the Commission may grant exemptions from Section 17(a) if the terms of a proposed transaction are: (1) Reasonable and fair and do not involve overreaching on the part of any person concerned; (2) consistent with the policy of each registered investment company concerned; and (3) consistent with the general purposes of the 1940 Act.

6. Applicants request an exemption from Section 17(a) under Section 17(b),

as well as under Section 6(c), because the relief requested may be deemed to exempt more than one transaction.

7. Applicants contend that the proposed Reorganization meets the standards for relief under Sections 6(c) and 17(b). Applicants assert that the terms of the transactions between Separate Account B, Separate Account D, and the Trust are reasonable and fair and do not involve overreaching.

8. As stated previously, Applicants assert that the proposed Reorganization will benefit existing and future Contract Owners by investing interests in Separate Account D in what is expected will be a larger more viable investment vehicle. Applicants further state that this consolidation of portfolio assets may benefit the Trust, Separate Account B and the Contract Owners by offering increased opportunities for investment and broader diversification of assets.

9. Applicants represent that the transfer of assets from Separate Account D to Separate Account B, and from Separate Account B to the Series, will be made in accordance with the terms of Section 22(c) and Rule 22c–1 thereunder.

10. Applicants state that the combination of Separate Account D into Separate Account B will result in Contract Owner interests which, in practical economic terms, do not differ in any measurable way from such interests immediately prior to the Reorganization. Applicants assert that Contract Owners will recognize no gain or loss on the transfer of the assets of Separate Account D to the Trust, and that Contract Owners will pay no tax as a result of the transfer. In addition, expenses borne by Separate Account D Contract Owners will be no higher following the Reorganization than before the Reorganization.

11. Applicants further state that the proposed Reorganization is consistent with the investment policies of Separate Account D and the Series, as each will have materially similar investment objectives and policies.

12. In addition, Applicants assert that the proposed Reorganization is consistent with the general purposes of the 1940 Act because Separate Account D Contract Owners will be fully informed of the proposed Reorganization and will be entitled to approve or disapprove the Reorganization at the meeting of Contract Owners called for this purpose.

Sections 6(c) and 17(d), and Rule 17d–1

13. Section 17(d) of the 1940 Act prohibits an affiliated person of a registered investment company from effecting any transaction in which the company is a joint participant in contravention of Commission rules.

14. Rule 17d–1(a) prohibits an affiliated person of any registered investment company, acting as principal, from participating in or effecting any transaction in a ''joint enterprise or other joint arrangement'' in which the company is a participant without prior Commission approval.

15. Rule 17d–1(b) provides that when the Commission is passing upon exemptive applications for joint transactions, the Commission is to ''consider whether the participation * * * in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the [1940] Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.''

16. According to Applicants, the transactions may constitute a joint enterprise or other joint arrangement within the meaning of Section 17(d) of the 1940 Act and Rule 17d–1, thereunder. This is because the Reorganization anticipates simultaneous transactions involving a number of registered companies, and each transaction is dependent on the others. Applicants, therefore, request that the Commission grant an order under Sections 17(d) and 6(c) (to the extent necessary) and Rule 17d–1 permitting the transactions.

17. Applicants assert that, for the reasons stated above in the Section 17(b) legal arguments section, the proposed Reorganization satisfies the standards for relief under Sections 17(d) and 6(c), and Rule 17d–1 thereunder, because the contemplated transactions are consistent with the provisions, policies, and purposes of the 1940 Act. In addition, Applicants assert that they have satisfied these standards because each party will participate in the transaction on equal terms, and no party will be disadvantaged by the proposed transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18175 Filed 7–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22067; No. 812–10036]

Great-West Life & Annuity Insurance Company, et al.

July 11, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an Order pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Great-West Life & Annuity Insurance Company (''Great-West''), Variable Annuity-1 Series Account (the ''Separate Account''), and Charles Schwab & Company, Inc. (''Schwab'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Section 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of: (a) the Separate Account in connection with the offer and sale of certain variable annuity contracts (''Existing Contracts''); (b) the Separate Account in connection with the issuance of variable annuity contracts that are substantially similar in all material respects to the Existing Contracts (''Future Contracts,'' together with Existing Contracts, the ''Contracts''); and (c) any other separate account established in the future by Great-West in connection with the issuance of Contracts (''Future Account'').

FILING DATE: The application was filed on March 6, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 5, 1996, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Jorden Burt Berenson & Johnson LLP, 1025 Thomas Jefferson Street, N.W., Suite 400 East, Washington, D.C. 20007–0805, Attention: Josephine Cicchetti, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Great-West is a stock life insurance company originally organized under the laws of the State of Kansas as the National Interment Association. In September of 1990, Great-West redomesticated and now is organized under the laws of the State of Colorado.

2. Great-West is wholly-owned by The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco Inc., an insurance holding company which, in turn, is a subsidiary of Power Financial Corporation of Canada, a financial services company. Power Corporation of Canada, a holding and management company, has voting control of Power Financial Corporation of Canada. Great-West is principally engaged in offering life insurance, annuity contracts, and accident and health insurance and is admitted to do business in the District of Columbia, Puerto Rico and in all states of the United States, except New York.

3. Schwab, the principal underwriter and distributor of the Contracts, is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

4. The Separate Account currently has nineteen investment divisions (''Investment Divisions''). The Investment Divisions invest solely in corresponding open-end management investment companies, or portfolios thereof, which are registered under the 1940 Act (''Funds''). Each Fund has a different investment objective and policies as described in its prospectus.

5. The Contracts provide for the accumulation of values on a variable basis determined by the investment experience of the Investment Divisions of the Separate Account to which the owner of the Contract (''Owner'') allocates his or her contributions and/or on a fixed basis pursuant to a stated rate of interest made available for certain time periods (the ''Fixed Option''). The Contracts are intended to be used either in connection with retirement plans with qualify for federal tax benefits under Section 408 of the Internal Revenue Code as an individual retirement annuity or in connection with retirement plans which do not so qualify. The Contracts may be used for other purposes in the future.

6. The Contracts provide a choice of annuity options. Annuity payments will be on a variable or fixed basis. An Owner directs the allocation of contributions and value of the annuity account (''Annuity Account Value'') among the Investment Divisions of the Separate Account or the available Fixed Options.

7. The Contracts provide for a death benefit. If the Owner or annuitant, as applicable, dies prior to the date annuity payments commence, the death benefit, if any, will be equal to the greater of: (a) the Annuity Account Value as of the date request for payment is received, less any premium taxes; or (b) the sum of contributions paid less partial withdrawals and/or periodic withdrawals, less charges under the Contract, less premium taxes, if any.

8. The Contracts have no front-end sales load and no contingent deferred sales charges. A charge for any premium or other taxes levied by any government entity with respect to the Contracts or the Accounts will be deducted when incurred under a particular Contract. Currently such taxes range up to 3.5%.

9. Prior to the date annuity payments commence, a contract maintenance charge equal to $25 annually will be deducted from the Annuity Account Value.

10. An Owner may make up to 10 transfers per year of all or a portion of the Annuity Account Value allocated to an Investment Division of the Separate Account or the Fixed Option, to another Investment Division of the Separate Account or available Fixed Option, at no charge. After the 10 free transfers Great-West may charge $10 for each additional transfer. This charge is intended to reimburse Great-West's ongoing administrative expenses and Great-West does not expect to profit from it. The amount of this charge will not exceed the cost of services provided over the life of the Contract, defined in accordance with the applicable standards in Rule 26a–1 under the 1940 Act.

11. Great-West bears a mortality risk under the Contracts of its obligation to make annuity payments determined in accordance with the annuity tables and other provisions of the Contracts. Great-West assumes the risk that the Annuitant may live longer than the annuity tables predict. The mortality risk under the Contract is the risk that, upon selection of an annuity option with a life contingency, Annuitants will live longer than Great-West's actuarial projections indicate, thereby resulting in higher than expected annuity payments. Great-West also assumes a mortality risk because it bears the risk of unfavorable experience of the Investment Divisions if it pays a death benefit before annuity payments commence.

12. Great-West bears an expense risk under the Contracts because the charges for administrative expenses, which charges are guaranteed for the life of the Contract, may be insufficient to cover the actual costs of issuing and administering the Contract.

13. Great-West imposes a charge as compensation for bearing the mortality and expense risks. The Contracts provide for this mortality and expense risk charge, and the rate imposed for the mortality and expense risk charge is stated in the Contract. The annual mortality and expense risk charge will not exceed 0.85% of the net asset value of the Separate Account, of which 0.68% is allocable to the mortality risk and 0.17% to the expense risk.

14. If the mortality and expense risk charge is insufficient to cover the actual costs, the loss will be borne by Great-West. Conversely, if the amount deducted proves more than sufficient, then the excess will be a profit to Great-West. The mortality and expense risk charge is guaranteed by Great-West and cannot be increased.

Applicants' Legal Analysis and Conditions

1. Pursuant to Section 6(c) of the 1940 Act, the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services normally performed by the bank itself.

3. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the expense risk charge from the assets of the Separate Account and any Future Accounts in connection with the Contracts.

4. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charge under variable annuity contracts comparable to the Contracts currently being offered in the insurance industry, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge-level or annuity-rate guarantees, and the markets in which the Contracts will be offered. Based upon this review, Applicants further represent that the mortality and expense risk charge under the Contracts is within the range of industry practice for comparable contracts. Great-West will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

5. Applicants represent that, prior to offering any Future Contracts through the Separate Account or Future Accounts, Applicants will represent that the mortality and expense risk charges under any such Contracts will be within the range of industry practice for comparable contracts. Great-West will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants will cover the costs of distributing the Contracts from the assets of the general account, since no front-end or contingent deferred sales charges are imposed under the Contracts. This distribution expense paid from the assets of the general account of Great-West will include amounts derived from the mortality and expense risk charge. Great-West has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Separate Account and the Owners. Great-West will maintain at its administrative offices, available to the Commission, a memorandum setting forth the basis for this representation.

7. Applicants recognize that any additional cost for distributing Future Contracts will be derived from the general account of Great-West, which will include amounts derived from the mortality and expense risk charge imposed under such Future Contracts. Great-West will maintain at its administrative offices, available to the Commission, a memorandum setting forth the basis for a representation that the distribution financing arrangement for such Future Contracts will benefit the Separate Account, or Future Account, and the Owners.

8. Applicants represent that the Separate Account will invest only in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such funds, and who would oversee the formulation and approval of any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

9. Applicants submit that their request for exemptive relief would promote competitiveness in the variable annuity contract market by eliminating the need for redundant exemptive applications, thereby reducing Applicants' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18174 Filed 7–17–96; 8:45 am]

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[Rel. No. IC–22066; No. 812–9944]

The Minnesota Mutual Life Insurance Company, et al.

July 11, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application of Exemptions pursuant to the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Minnesota Mutual Life Insurance Company (''Minnesota Mutual''), Minnesota Mutual Variable Life Separate Account (''Account'') and MIMLIC Sales Corporation (''MIMLIC Sales'').

RELEVANT ACT SECTIONS: Order requested pursuant to Sections 6(c) of the Act, granting exemptions from Sections 2(a)(35), 22(c), 22(d), 22(e), 26(a), 27(a), 27(c), 27(d) and 27(f) of the Act and from Rules 6e–2(b)(1), (b)(12)(i), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(v), (b)(13)(viii), (c)(1) and (c)(4), 22c–1 and 27f–1 thereunder. Order also requested pursuant to Section 11 approving an exchange offer.

SUMMARY OF APPLICATION: The relief requested would permit the offer and sale of certain scheduled premium variable life insurance policies (''Policies'') that provide for: (a) a cash option death benefit; (b) a scheduled decrease in the initial face amount and the subsequent adjustment of Policies to a face amount less than the initial face amount; (c) deduction of cost of insurance charges not to exceed the charges derived from the 1980 Commissioners Standard Ordinary Mortality Table for purposes of calculating ''sales load''; (d) deduction of a federal tax charge; (e) the anticipated joint life expectancy of the insureds to be determined on the basis of the 1980 Commissioners Standard Ordinary Mortality Table for purposes of calculating the period over which sales load may not exceed 9 percent; (f) assessment of a new first year sales load upon a policy adjustment involving an increase in base premium, which sales load may be in addition to a first year sales load being taken at the time the adjustment is made; (g) increase in the proportionate amount of sales load deducted from premiums following certain policy adjustments or the payment of nonrepeating premiums; (h) deduction from Account assets of the proposed charges for the cost of insurance and the face amount guarantee; (i) a right to convert to a fixed benefit adjustable life insurance policy with a death benefit equal to the Policy's then current face amount and with a plan of insurance which may be less than for the whole of life; and (j) personal delivery to Policy owners of free-look right notices which contain information comparable to that required by Form N–27I–2. The requested relief also would approve an exchange offer. The relief would extend to any variable

life insurance policies that may be offered in the future that are substantially similar in all material respects to the Policies (''Future Policies'') that are funded by the Account or any other separate accounts established in the future by Minnesota Mutual (''Future Accounts'') and that may be offered by MIMLIC Sales or any other members of the National Association of Securities Dealers, Inc. (''NASD'') that may in the future serve as principal underwriters of the Policies or Future Policies (''Future Underwriters'').

FILING DATE: The application was filed on January 16, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 5, 1996, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o J. Sumner Jones, Esq., Jones & Blouch L.L.P., Suite 405 West, 1025 Thomas Jefferson Street, N.W., Washington, D.C. 20007–0805.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants, Representations

1. Minnesota Mutual is a mutual life insurance company organized under the laws of Minnesota in 1880. It is authorized to do life insurance business in the District of Columbia, certain Canadian provinces, Puerto Rico and all states of the United States except New York.

2. The Account is a separate account of Minnesota Mutual established by its Board of Trustees on October 21, 1985, to facilitate the issuance of scheduled premium variable life insurance policies. Under Minnesota law, assets of the Account equal to the reserves and other Account liabilities are not chargeable with liabilities arising out of any other business Minnesota Mutual may conduct, and the income, gains and losses, realized or unrealized, of the Account are credited to or charged against the Account without regard to other income, gains or losses of Minnesota Mutual.

3. MIMLIC Sales, an indirect wholly-owned subsidiary of Minnesota Mutual, is the principal underwriter for the Account. The Policies will be sold by life insurance agents of Minnesota Mutual who are associated persons of either MIMLIC Sales or other broker-dealers who have entered into selling agreements with MIMLIC Sales. MIMLIC Sales is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD.

4. Assets of the Account are invested in shares of MIMLIC Series Fund, Inc. (''Fund''), a diversified, management investment company registered under the Act. The Fund is a series company consisting of a number of separate portfolios. Shares of each portfolio are sold without a sales charge to the Account and to other separate accounts of Minnesota Mutual established for the purpose of funding variable annuity contracts and other variable life insurance policies issued by Minnesota Mutual.

5. The Policies are scheduled premium variable life insurance policies that pay a death benefit at the death of the second to die of two named insureds (''second death''). The Policies permit an owner to select a plan of insurance based on his or her insurance needs and the amount of premium the owner wishes to pay. Based on the owner's selection of any two of three components of a Policy—face amount, premium and plan of insurance—Minnesota Mutual will then calculate the third. The owner may change the face amount and premium level, and thus the plan of insurance, subject to certain limitations, so long as the Policy remains in force.

6. The flexibility provided by the Policies results in a broad range of plans of insurance. ''Plan of insurance'' refers to the level of cash value accumulation assumed in the design of the Policy and, for whole life plans, the period of coverage over which premiums are required to be paid. There are two general categories of plans of insurance—whole life plans and protection plans. Whole life plans contemplate an eventual cash value accumulation, at or before the younger insured's age 100, equal to the net single premium require for the face amount of insurance. Premiums may be payable for a specified number of years or for the joint lives of the insured. Premiums payable for a specified number of years will cause a Policy to become paid-up prior to the younger insured's age 100. At issue, the maximum plan of insurance permitted under the Policies for a specific face amount is one in which the Policy will be paid up after the payment of ten annual premiums. A Policy is paid-up when is Policy value is such that no further premiums are required to provide the face amount of coverage until the second death of the two insureds.

7. Protection plans of insurance assume an eventual exhaustion of cash value at the end of a specified period. Under conventional adjustable life, insurance coverage would terminate at the end of the specified period. However, since premiums under the Policies are payable for the joint lives of two insureds, the Policies provide for a scheduled reduction in face amount at the end of the initial period of coverage to an amount which the continued payment of the scheduled premium will provide a whole life plan. The minimum plan of insurance for a specific face amount is one which will provide for no scheduled reduction in face amount for at least ten years, except where the age of the younger insured is over age 70, in which case the minimum plan will be less than ten years.

8. The scheduled reduction in face amount under a protection plan will occur at such time as the Policy's tabular cash value, i.e., the cash value which is assumed in designing the Policy and which would be guaranteed in a conventional fixed-benefit policy, is exhausted. If, at the time of a scheduled reduction in face amount, the actual cash value with the annual premium is sufficient to provide at least one year of protection at the then current face amount, the Policy will be adjusted to preserve the current face amount. The adjustment will result in a scheduled decrease in the current face amount at a later Policy anniversary, the elimination of the scheduled decrease in face amount, or the shortening of the premium payment period.

9. The Policies offer a choice of two death benefits—the ''cash option'' and the protection option. If neither death benefit option has been elected, the cash option will be in effect. The scheduled premium for a Policy is the same no matter which option is chosen. Under the cash option, the death benefit is the current face amount at the time of the

second death. The death benefit will not vary unless the Policy value exceeds the net single premium for the then current face amount. Under the protection option,the death benefit is the Policy value plus the greater of the then current face amount or the amount of insurance which could be purchased using the Policy values as a net single premium. The net single premium is the amount necessary to pay all future guaranteed cost of insurance charges for the lifetime of both insureds without the payment of additional premium. The protection option death benefit is available only until the Policy anniversary nearest the younger insured's age 70. At the Policy anniversary nearest the younger insured's age 70, the protection option is automatically converted to the cash option death benefit. At that time the Policy will be automatically adjusted so that the face amount will equal the death benefit in effect immediately prior to the adjustment.

10. One of the principal benefits of an adjustable policy such as the Policy is that it may be adjusted on any monthly anniversary of the policy date to reflect the changing personal and insurance needs of the owner. Unlike most traditional life insurance policies, there is no need to exchange the Policy or to purchase an additional policy as such needs change. The Policies allow the owner to make four types of adjustment: (a) an increase or decrease in the premium; (b) an increase or decrease in the face amount; (c) a partial surrender; and (d) an adjustment to stop premium, which is an adjustment made on the assumption that no further base premiums will be paid. There are also two automatic adjustments, one at the point that the face amount is scheduled to decrease and the other upon the change from protection option death benefit to the cash option death benefit at the Policy anniversary nearest the younger insured's age 70.

11. An adjustment usually will result in a change in the Policy's plan of insurance. Depending on the adjustment requested, for whole life plans the premium paying period may be lengthened or shortened or the plan may be changed from a whole life plan to protection plan by providing for a scheduled reduction in face amount at a future date. For Policies having a protection plan prior to an adjustment, and adjustment may change the Policy to a whole life plan by eliminating the scheduled decrease in face amount or it may change the duration of the plan by changing the time at which the decrease is scheduled to occur.

12. If an owner requests an increase in scheduled premium, the adjustment will result in either an increase in face amount or an improvement in plan, whichever the owner selects. If the owner requests a decrease in scheduled premium or makes a partial withdrawal, the opposite results occur—a decrease in face amount or reduction in plan. An improvement in plan is, in the case of protection plans of insurance, a postponement of the time at which a reduction in face amount is scheduled to occur and, in the case of whole life plans, a reduction in the premium payment period. Elimination of a scheduled decrease in face amount and reduction in the premium payment period will occur if the improvement in plan is sufficient to convert a protection plan of insurance to a plan greater than whole life.

13. Plan changes also will result from changes in face amount with or without changes in premium. Thus, an improvement in plan may be made by reducing the face amount while keeping the premium constant, and conversely, a reduction in plan may be made by increasing the face amount without a change in premium. If both face amount and premium are changed, the resulting plan will depend on the extent of the changes and whether the influence of the face amount or premium on the plan complements or contradicts the influence of the other. For example, if an owner requested a reduction in both face amount and premium, the effect of the reduction in face amount might more than offset the effect of a lower premium so as to result in an improved plan of insurance.

14. The plan of insurance also will be affected by an adjustment to stop premium. This type of adjustment may be viewed as a decrease in base premium to a zero amount. In the absence of an accompanying request to change the face amount, and adjustment to stop premium is in effect a redetermination of the plan of insurance on the assumption that no further base premiums will be paid. In view of the contemplated termination of base premium payments, the resulting plan will usually be substantially reduced.

15. When a Policy is adjusted, Minnesota Mutual will in effect reissue the Policy by computing a new plan of insurance, face amount and premium amount, if any. In addition, Minnesota Mutual will bring all Policy charges up to date, charge and credit loan interest and then calculate new tabular cash, actual cash and Policy values. In computing either a new face amount or new plan of insurance as a result of an adjustment, Minnesota Mutual will make the calculation on the basis of the higher of the Policy's Policy value or its tabular cash value at the time of the change. If the Policy value is higher than the tabular cash value, whether as the result of favorable investment performance, the payment of a nonrepeating premium or otherwise, a Policy adjustment will translate the excess value into enhanced insurance coverage in the form of either a higher face amount or an improved plan of insurance. If the Policy value is less than the tabular cash value, use of the tabular cash value insures that the Policy's guarantee of a minimum death benefit is not impaired by the adjustment.

16. An adjustment also will result in the computation of a new tabular cash value. The tabular cash value after adjustment will be equal to the greater of the Policy value or the tabular cash value prior to the adjustment, plus the amount of any nonrepeating premium credited to the Policy and minus the amount of any partial surrender made at the time of the adjustment. Although the payment of a nonrepeating premium is not an adjustment, any such payment will be reflected in the tabular cash value of the Policy at issue or upon later adjustment. Minnesota Mutual reserves the right in its discretion to impose restrictions on or to refuse to permit nonrepeating premiums.

17. The Policies provide various limitations and conditions on the right to make adjustments. These limitations and conditions may be changed in the future or additional restrictions may be imposed.

18. Charges under the Policies are assessed against scheduled and nonrepeating premiums, the Policies' actual cash values and the assets of the Account. Premium charges vary depending on whether the premium is a scheduled premium or a nonrepeating premium. From scheduled premiums there is deducted any charge for sub-standard risks and any charge for additional benefits provided by rider to determine the base premium. From the base premium there is deducted a sales load, an underwriting charge, a premium tax charge and a federal tax charge.

19. A basic sales load of 7 percent will be deducted from each scheduled premium and a first year sales load not to exceed 23 percent also may be deducted. A first year sales load will be applied only against base premiums scheduled to be paid in the twelve month periods following the Policy data, any policy adjustment involving an increase in base premium or any policy adjustment occurring during a

period when a first year sales load is being assessed. It will also apply only to that portion of an annual base premium necessary for an original issue whole life plan of insurance. For base premiums greater than this whole life premium, the amount of the base premium in excess of the original issue whole life base premium will be subject only to the 7 percent basic sales load. In computing the first year sales load following a policy adjustment involving an increase in base premium, the charge will be applied only to the amount of the increase in base premium. However, if an adjustment occurs during a period when a first year sales load is being taken, the uncollected portion of such sales load—determined on the basis of the lesser of the base premium in effect prior to, or following, the adjustment—will also be assessed during the twelve month period following the adjustment. All of the sales load charges are designed to average not more than 9 percent of the base premiums over the lesser of: (a) the joint life expectancy of the insureds at policy issue or adjustment; (b) fifteen years from policy issue or adjustment; or (c) the premium paying period. Compliance with the 9 percent ceiling will be achieved by reducing the amount of the first year sales load, if necessary.

20. An underwriting charge currently in an amount not in excess of $10 per $1,000 of face amount of insurance will be deducted ratably from the premiums scheduled to be made during the first Policy year and during the twelve month period following certain policy adjustments. In the event of a policy adjustment which results in a face amount increase and no base premium, the Policy owner must remit the underwriting charge to Minnesota Mutual prior to the effective date of the adjustment or it will be assessed against the Policy's actual cash value as a transaction charge. The specific amount of the charge may vary depending on the ages of the insureds and the premium level for a given amount of insurance. The underwriting charge is designed to compensate Minnesota Mutual for the administrative costs associated with issuing and adjusting Policies, including the cost of processing applications and adjustment requests, conducting medical examinations, classifying risks, determining insurability and risk class and establishing or modifying Policy records. Although the charge is not expected to be a source of profit to Minnesota Mutual, the amount of the charge is not guaranteed so that on adjustment the then current underwriting charge will apply to any increase in face amount which requires new evidence of insurability.

21. A premium tax charge of 2.5 percent of each base premium will be deducted to cover the aggregate premium taxes payable by Minnesota Mutual to state and local governments for the Policies. The premium tax charge is not guaranteed and may be increased in the future, but only as necessary to cover premium tax expenses. Also, a federal tax charge of 1.25 percent of each base premium will be deducted to cover a federal tax related to premium payments. The federal tax charge is not guaranteed and may be increased in the future, but only as necessary to cover the federal tax related to premium payments.

22. Nonrepeating premiums will be subject only to the basic sales load of 7 percent, the 2.5 percent premium tax charge and the 1.25 percent federal tax charge. No underwriting charge will be assessed. Minnesota Mutual intends initially to waive the assessment of any sales charge against nonrepeating premiums, but reserves the right to impose the sales charge at a later date.

23. In addition to deductions from premiums, Minnesota Mutual deducts certain charges from a Policy's actual cash value, namely, an administration charge, a face amount guarantee charge, a cost of insurance charge and certain charges for specific Policy transactions. The administration charge is guaranteed not to exceed $15 per month and is currently set at $10 per month. It is designed to cover certain administrative expenses, including those attributable to maintaining Policy records. The charge is not expected to be a source of profit to Minnesota Mutual. The face amount guarantee charge is guaranteed not to exceed 3 cents per thousand dollars of face amount per month and is currently set at 2 cents per thousand. The charge is designed to compensate Minnesota Mutual for its guarantee that the death benefit under the Policy will always be at least equal to the current face amount in effect at the time of the second death regardless of the investment performance of the sub-accounts in which net premiums have been invested. The cost of insurance charge compensates Minnesota Mutual for providing the death benefit under a Policy. The charge is calculated by multiplying the net amount at risk under a Policy by a rate which is based on the age, gender, risk class and the smoking habits of each insured. The rate also reflects the plan of insurance and any policy adjustments since issue. The rate cannot exceed the maximum charges for mortality derived from the 1980 Commissioners Standard Ordinary Mortality Table. The transaction charges consist of a $95 charge for each policy adjustment, except for adjustments involving only partial withdrawals when the charge will be the lesser of $95 or 2 percent of the amount withdrawn, and a charge of up to $25 for each transfer of actual cash value among the guaranteed principal account and sub-accounts of the Account. Initially, the charge will be $10 for non-systematic transfers in excess of four per year. Establishing a systematic transfer program will be deemed to be a non-systematic transfer for purposes of determining the transfer charge. The above charges and restrictions will not apply to a transfer of all of the Policy value to the guaranteed principal account as a conversion privilege.

24. The administration, face amount guarantee and cost of insurance charges are deducted from a Policy's actual cash value on the same day each month as the Policy issue date. Such charges are also deducted on the occurrence of the second death, a surrender, lapse or policy adjustment. Transaction charges are assessed against the actual cash value of a Policy at the time of a policy adjustment or when a transfer is made. In the case of a transfer, the charge is assessed against the amount transferred.

25. The Policies also provide for charges against Account assets. Minnesota Mutual will deduct a mortality and expense risk charge on each valuation date at an annual rate of .50 percent of the Account's assets. In addition, Minnesota Mutual reserves the right to charge or make provision for any taxes payable by it with respect to the Account or the Policies by a charge or adjustment to Account assets.

26. The Policies provide for a ''free look'' right, which is available not only following issuance of the Policy, but also following any policy adjustments involving an increase in base premium. The owner may return his or her Policy to Minnesota Mutual or its agent by the later of: (a) 45 days after execution of the application or request for adjustment; (b) 10 days after receipt of the Policy or adjusted Policy from Minnesota Mutual; or (c) 10 days after Minnesota Mutual's mailing or delivery of a notice describing the right of withdrawal. On return of the Policy after issue, all premiums paid will be refunded. On return of an adjusted Policy, the requested adjustment, including the $95 transaction charge assessed for the adjustment, will be canceled and any increase in premium paid will be refunded.

27. The Policy contains no specific provision for conversion to a fixed

benefit policy as contemplated by paragraph (b)(13)(v)(B) of Rule 6e–2; however, fixed insurance coverage providing the benefits contemplated by that paragraph may be obtained by transferring all of the Policy value, and allocating all premiums, to the guaranteed principal account. So long as both insureds are alive, the owner of a Policy may ask to exchange the Policy for two individual policies insuring each of the insureds separately. Minnesota Mutual will require evidence of insurability to make the exchange. The two new policies will be issued on a variable or fixed benefit basis using a policy form in use on the date of the exchange; each new policy will have one-half of the death benefit, cash value and loan, if any, of the Policy being exchanged.

Applicants' Legal Analysis

Non-Variable Death Benefit

1. Under the Policies the actual cash value will vary with the investment performance of the sub-accounts selected by the owner so long as the Policy has not been surrendered or lapsed. The death benefit also will vary with such investment performance if the owner has selected the protection option. All Policies permit the owner to select the protection option at the time of purchase or to subsequently change to the protection option provided there is satisfactory evidence of the insured's insurability. However, the protection option is available only until the Policy anniversary nearest the younger insured's age 70; at that anniversary the death benefit option will be changed to the cash option. Whenever the cash option death benefit is in effect under a Policy, that Policy will fail to satisfy the conditions of clause (i) of the definition of variable life insurance contract and clause (i) of Rule 6e–2(b)(12) unless and until the Policy value exceeds the net single premium for the then current face amount. Applicants request exemptions from Sections 22(c), 22(d), 22(e) and 27(c)(1) of the Act, Rule 22c–1 and paragraphs (b)(12)(i) and (c)(1)(i) of Rule 6e–2 to the extent necessary to permit provision in the Policies for the cash option death benefit.

2. Applicants submit that no purpose would be served in prohibiting the cash option death benefit under the Policies or the required change to the cash option death benefit at the younger insured's age 70. Except for the amount of the death benefit and the cost of insurance charges which reflect the amount at risk, a Policy with the cash option death benefit will operate in the same manner as one with the protection option in effect. The cash option death benefit may be viewed by some Policy owners as preferable, because the amounts at risk under the Policy will be smaller than under the protection option; as a result, the cost of insurance will be less, thereby permitting a more rapid increase in the actual cash value of the Policy. Applicants believe that a purchaser of a variable life insurance policy should not be compelled to have a death benefit which varies with the investment performance of the separate account. Further, prohibiting the change in death benefit to the cash option would preclude Minnesota Mutual's offering certain plans of insurance with the protection option, because the large amounts at risk in relation to the Policy values that may exist at older ages under the protection option are incompatible with the amount at risk to Policy value ratios contemplated, and inherent in the Policy's guarantees, for certain plans of insurance, including whole life plans.

Change in Face Amount

3. Although all Policies provide for a guaranteed death benefit at least equal to the initial face amount, any Policy with a protection plan of insurance will provide for a scheduled reduction in face amount at the end of the initial term. Moreover, any Policy, including a Policy with a whole life plan of insurance, may be adjusted to a new face amount, which may be less than the initial face amount, and the death benefit guarantee will thereafter be applicable to the face amount as adjusted. Applicants request exemption from clause (ii) of Rule 6e–2(c)(1) to the extent necessary to permit the issuance of Policies with a scheduled decrease in the initial face amount, and the subsequent adjustment of Policies to a face amount less than the initial face amount.

4. Applicants submit that there are no policy reasons for not permitting scheduled reductions in face amount. Policies with such reductions will require smaller premium payments than comparable whole life Policies, and therefore may be more affordable to many purchasers, particularly younger persons who may not have reached their maximum earnings potential at a time when their insurance needs may be greatest. The scheduled reduction in face amount will be fully disclosed so that a Policy owner may understand the nature of the insurance coverage provided by his or her Policy. Finally, the amount of reduced insurance is guaranteed regardless of the investment performance of the sub-accounts selected by the owner, so that the death benefit guarantee, although changed in amount, will continue until the second death.

5. Exemptive relief from clause (ii) of Rule 6e–2(c)(1) is also required to permit owners to adjust their Policies subsequent to issue, which adjustments may decrease the face amount of insurance. Applicants submit that it is in the best interests of purchasers of the Policies that they have the flexibility to increase or decrease the face amount of coverage of their Policies in light of their current insurance needs and economic circumstances. Since, in computing a new face amount, premium or plan in connection with an adjustment, Minnesota Mutual will use the greater of the Policy's then Policy value or its tabular cash value, the adjustment will not impair the face amount guarantee previously in effect.

Cost of Insurance Based on 1980 Commissioners Standard Ordinary Mortality Table (''1980 Table'')

6. In defining sales load, paragraph (c)(4) of Rule 6e–2 permits the exclusion of the cost of insurance based on the 1958 Commissioners Standard Ordinary Mortality Table (''1958 Table'') and the assumed investment rate specified in the contract. Under the Policies, the cost of insurance is guaranteed not to exceed the maximum charges for mortality derived from the 1980 Table. Applicants request exemption from Sections 2(a)(35) and 27(a)(1) of the Act and paragraphs (b)(1), (b)(13)(i) and (c)(4) of Rule 6e–2 to the extent necessary to permit the deduction of cost of insurance charges not to exceed the charges derived from the 1980 Table for purposes of calculating ''sales load.''

7. The 1980 Table reflects more current mortality experience. Moreover, except for young male insureds at certain ages, the table provides for lower cost of insurance charges. If Minnesota Mutual were to compute sales load on the basis of cost of insurance charges derived from the 1958 Table, it would be able to increase the amount of the gross premiums under most of the Policies it issues and to treat the increase as attributable to cost of insurance when in fact such would not be the case.

Deduction of Proposed Federal Tax Charge

8. Applicants requests an exemption from the provisions of Sections 2(a)(35), 27(a)(1) and 27(c)(2) of the Act an paragraphs (b)(1), (b)(13)(i) and (c)(4) of Rule 6e–2 to the extent necessary to permit deductions to be made from premium payments received under the Policies in an amount that is reasonable in relation to Minnesota Mutual's

increased federal income tax burden related to the receipt of such premiums and to treat such deductions as other than ''sales load'' for the purposes of the Act and Rule 6e–2.

9. The Policies provide for a deduction of a federal tax charge from each premium payment, including nonrepeating premiums. The current charge proposed to be deducted is 1.25 percent of the premium. Minnesota Mutual may increase the federal tax charge, but only to the extent necessary to cover the federal tax related to premium payments. Applicants submit that the proposed deduction to cover such charges is akin to a state premium tax charge in that it is an appropriate charge related to Minnesota Mutual's tax burden attributable to premiums received and therefore that the proposed deduction be treated as other than sales load, as is a state premium tax charge, for purposes of the Act.

10. In the Omnibus Budget Reconciliation Act of 1990 (''OBRA 1990''), Congress amended the Internal Revenue Code of 1986 (''Code'') by, among other things, enacting Section 848 thereof, Section 848 requires an insurance company to capitalize and amortize over a period of ten years part of the company's general expenses for the current year. Under prior law, these general expenses were deductible in full from the current year's gross income. The effect of Section 848 is to accelerate the realization of income from insurance contracts covered by that section and, accordingly, the payment of taxes on the income generated by those contracts. The amount of general deductions that must be capitalized and amortized over ten years, rather than deducted in the year incurred, is based solely upon ''net premiums'' received in connection with certain types of insurance contracts. The Policies fall into the category of life insurance contracts, and under Section 848, 7.7 percent of the year's net premiums received must be capitalized and amortized.

11. The increased tax burden on Minnesota Mutual resulting from Section 848 may be quantified as follows. For each $10,000 of net scheduled premiums received by Minnesota Mutual under the Policies in a given year, Section 848 requires Minnesota Mutual to capitalize $770 (7.7 percent of $10,000) and $38.50 of this $770 may be deducted in the current year. This leaves $731.50 ($770 minus $38.50) subject to taxation at the corporate tax rate of 35 percent, which results in Minnesota Mutual owing $256.03 (.35×$731.50) more in taxes for the current year than would have been owed by Minnesota Mutual prior to OBRA 1990. This current increase in federal income tax will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $731.50 ($77 in each of the following nine years and $38.50 in year ten).

12. In the business judgment of Minnesota Mutual, a discount rate of at least 10 percent is appropriate for use in calculating the present value of Minnesota Mutual's future tax deductions resulting from the amortization described above. Minnesota Mutual seeks an after tax rate of return on the investment of its surplus of 10 percent. To the extent that surplus must be used by Minnesota Mutual to meet its increased federal tax burden under Section 848 resulting from the receipt of premiums, such surplus is not available to Minnesota Mutual for investment. Thus, the cost of ''capital'' used to satisfy Minnesota Mutual's increased federal income tax burden under Section 848 is, in essence, Minnesota Mutual's after-tax rate of return on surplus.

13. In determining the after-tax rate of return used in arriving at the 10 percent discount rate, Minnesota Mutual considered a number of factors, including market interest rates, Minnesota Mutual's anticipated long-term growth rate, the risk level for this type of business that is acceptable to Minnesota Mutual, inflation, and available information about the rates of return obtained by other mutual life insurance companies. Minnesota Mutual represents that these factors are appropriate factors to consider in determining its cost of capital. Minnesota Mutual first projects its future growth rate based on sales projections, current interest rates, the inflation rate, and the amount of surplus that it can provide to support such growth. It then uses the anticipated growth rate and the other factors cited above to set a rate of return on surplus that equals or exceeds this rate of growth. Of these other factors, market interest rates, the acceptable risk level and the inflation rate receive significantly more weight than information about the rates of return obtained by other companies.

14. Minnesota Mutual seeks to maintain a ratio of surplus to assets that it establishes based on its judgment of the risks represented by various components of its assets and liabilities. Consequently, Minnesota Mutual's surplus must grow at least at the same rate as its assets. On the basis of the foregoing, Applicants submit that Minnesota Mutual's after-tax rate of return on surplus is appropriate for use in the present value calculation of future tax benefits. Minnesota Mutual undertakes to monitor the tax burden imposed on it and to reduce the federal tax charge to the extent of any significant decrease in the tax burden.

15. If a corporate federal income tax rate of 35 percent and a discount rate of 10 percent are used, the present value of the federal income tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased federal income tax burden is $160.40. The effect of Section 848 on Minnesota Mutual in connection with the Policies is, therefore, an increased federal income tax burden with a present value of $95.63 for each $10,000 of net premiums, *i.e.*, $256.03 minus $160.40. Federal income taxes are not deductible in computing Minnesota Mutual's federal income taxes. To compensate Minnesota Mutual fully for the impact of Section 848, therefore, it would be necessary to allow Minnesota Mutual to impose an additional charge that would compensate it not only for the $95.43 additional federal income tax burden attributable to Section 848 but also for the federal income tax on the additional $95.43 itself. This federal income tax can be determined by dividing $95.43 by the complement of the 35 percent federal corporate income tax rate, *i.e.*, 65 percent, resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47 percent.

16. Based on prior experience, Minnesota Mutual expects that all of its current and future deductions will be fully taken. It is Minnesota Mutual's judgment that a charge of 1.25 percent would reimburse Minnesota Mutual in part for the impact of Section 848 on Minnesota Mutual's federal income tax liabilities. The charge to be deducted by Minnesota Mutual is reasonably related to Minnesota Mutual's increased federal income tax burden under Section 848, taking into account the benefit to Minnesota Mutual of the amortization permitted by Section 848 and the use by Minnesota Mutual of a discount rate of 10 percent in computing the future deductions resulting from such amortization.

17. While Minnesota Mutual believes that a charge of 1.25 percent of premiums would reimburse it in part for the impact of Section 848 as currently written on Minnesota Mutual's federal income tax liabilities, Minnesota Mutual also believes that it may have to increase this charge either to recover in full the impact of Section 848 as presently written or to recover any increased federal income tax burden resulting from a future change in

Section 848, or the interpretation thereof, or any successor or related provisions. Such an increase could result from, among other things, a change in the corporate federal income tax rate, a change in the 7.7 percent figure, or a change in the amortization period. Accordingly, Minnesota Mutual has reserved the right to increase the federal tax charge to the extent necessary to cover the federal tax related to premium payments.

18. The requested exemptions are necessary in connection with Applicants' reliance on certain provision of Rule 6e–2(b)(13), particularly paragraph (b)(13)(i), which provides as here pertinent an exemption from Section 27(a)(1). Issuers and their affiliates may rely on Rule 6e–2(b)(13)(i) only if they meet the Rule's limitations on ''sales load'' as defined in Rule 6e–2(c)(4). Depending upon the load structure of a particular Policy, these limitations may not be met if the deduction for the increase in Minnesota Mutual's federal tax burden is included in sales load. Although a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or other amounts which are excluded from the definition of sales load in Rule 6e–2(c)(4), applicants have found no public policy reasons for including them in ''sales load.''

19. The public policy that underlies Rule 6e–2(b)(13)(i), like that which underlies Section 27(a)(1) of the Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission appears to have concurred with this rationale by excluding deductions for state premium taxes from the definition of sales load in Rule 6e–2(c)(4). The source for the definition of sales load found in the Rule supports this analysis. The Commission's intent in adopting paragraph (c)(4) of rule 6e–2 was to tailor the general terms of Section 2(a)(35) of the Act to variable life insurance contracts. Section 2(a)(35) excludes deductions from premiums for ''issue taxes'' from the definition of sales load in the Act. This suggests, Applicants argue, that it is consistent with the policies of the Act to exclude from the definition of sales load in Rule 6e–2(c)(4) deductions made to pay an insurance company's costs attributable to its tax obligations. Section 2(a)(35) also excludes administrative expenses or fees that are ''not properly chargeable to sales or promotional activities.'' This suggests that the only deductions intended to fall within the definition of sales load are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate Minnesota Mutual for its increased federal income tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, the deductions should not be treated as sales load for purposes of the Act and Rule 6e–2.

20. Applicants agree that if the requested order is granted, such order may be expressly conditioned on Applicants' compliance with the following undertakings:

(a) Minnesota Mutual will monitor the federal tax burden attributable to its receipt of premiums under the Policies and will reduce the federal tax charge to the extent of any significant decrease in the tax burden;

(b) the registration statement for the Policies will: (1) disclose the federal tax charge; (2) explain the purpose of the charge; and (3) state that the charge is reasonable in relation to Minnesota Mutual's increased federal income tax burden under Section 848 of the Code resulting from the receipt of premiums; and

(c) the registration statement for the Policies will contain as an exhibit an actuarial opinion as to: (1) the reasonableness of the charge in relation to Minnesota Mutual's increased federal income tax burden under Section 848 resulting from the receipt of premiums; (2) the reasonableness of the after-tax rate of return that is used in calculating such charge and the relationship that such charge has to Minnesota Mutual's cost of capital; and (3) the appropriateness of the factors taken into account by Minnesota Mutual in determining the after-tax rate of return.

Anticipated Life Expectancy Based on 1980 Table

21. Under the Policies, there is a basic sales load of seven percent and a first year sales load of up to 23 percent. The first year sales load is adjusted so that all sales load charges will average not more than nine percent of the base premiums scheduled to be paid over the lesser of: (a) 15 years from the date of Policy issue or adjustment; or (b) the anticipated joint life expectancy of the insureds at Policy issue or adjustment based on the 1980 Table. Since longevity is generally greater under the 1980 Table, the period for compliance with the nine percent sales load limitation contained in the Policies could be longer than the period contemplated by paragraph (b)(13)(i). Applicants request exemption from Section 27(a)(1) of the Act and paragraph (b)(13)(i) of Rule 6e–2 to the extent necessary to permit the anticipated joint life expectancy of the insureds to be determined on the basis of the 1980 Table for purposes of calculating the period over which sales loads may not exceed 9 percent.

22. The Policies have been designed on the basis of the 1980 Table for all purposes. Presumably, the purpose of the life expectancy provision in paragraph (b)(13)(i) of the Rule is to provide a realistic limitation on the number of payments that can reasonably be anticipated under a scheduled premium contract issued for an older insured. Applicants submit that the more current 1980 Table is appropriate for this purpose.

First Year Sales Load on Policy Adjustments

23. Applicants propose to assess a new first year sales load upon any adjustment of a Policy involving an increase in the base premium and to continue to assess a first year sales load if an adjustment is made during a period when a first year sales load is currently being taken. A policy adjustment is essentially the issuance of a new Policy in exchange for an old Policy with the higher of the tabular cash value or the Policy value of the old Policy being transferred to the new Policy at no load except for a charge of $95 (the lesser of $95 or 2 percent in the case of a partial withdrawal) to cover administrative expenses associated with the reissue.

24. If a policy adjustment is reviewed as an exchange, the exchange would be permitted under the terms of Rule 11a–2 under the Act, and a new first year sales load could be assessed without need for exemptive relief. However, since an adjustment is made in accordance with the terms of the Policies, the adjusted Policy could be viewed as a continuation of the old Policy, and a new first year sales load assessed as a result of an adjustment involving an increase in base premium might result in the aggregate sales loads exceeding nine percent if the 20 year period in which to comply with the nine percent ceiling were measured from the date of issue as opposed to the date of adjustment. In order to resolve the uncertainty of whether, for sales load purposes, an adjustment can be viewed as an exchange, Applicants request exemption from Section 27(a)(1)

of the Act and Rule 6e–2(b)(13)(i) to the extent necessary to permit the assessment of a new first year sales load upon an adjustment of a Policy involving an increase in base premium, which sales load may be in addition to a first year sales load being taken at the time the adjustment is made.

25. Applicants submit that collection of a new first year sales load upon an adjustment involving an increase in base premium is appropriate in view of the fact that such an adjustment is not expected to occur in typical cases without substantial sales effort for which first year sales compensation from Minnesota Mutual will be required. Applicants assert that, in adopting Rule 6e–3(T) under the Act, the commission appears to have recognized that a first year sales load should be allowed for an increase in face amount provided the free look and conversion rights applicable upon issuance of a contract are available for the incremental insurance coverage. Applicants submit that under the Policies an improvement in plan is comparable to an increase in face amount and that a new first year sales load is appropriate regardless of the form in which the enhanced insurance coverage resulting from the increase in premium is taken. The terms of the Policies permit an owner to obtain at any time the equivalent of a fixed dollar adjustable life insurance policy, and Minnesota Mutual will provide a free look right with respect to any adjustment involving an increase in base premium.

26. Applicants further submit that the continued assessment of an existing first year sales load in addition to a new first year sales load is appropriate in the circumstances where it arises. If an adjustment is made when a first year sales load is being taken—during the twelve month period following issuance of the Policy or a prior policy adjustment—the uncollected portion of such sales load will be assessed during the twelve month period following the adjustment. The continued assessment of such first year sales load is warranted in this circumstance as it permits Minnesota Mutual to recover as a sales load no more than what it would have received had the adjustment not occurred. Where the adjustment made is one resulting in an increase in base premium, the only change in the first year sales load applicable to the base premium previously in effect is that its assessment is made over a new twelve month period. Assessing the uncollected portion of the first year sales load applicable to the premium previously in effect over a new twelve month period is to the advantage of the Policy owner because it results in a greater portion of the base premium being available for investment and an earlier increase in Policy value.

27. Where an adjustment results in the assessment of a new first year sales load or the continued assessment of an existing first year sales load, the aggregate sales loads thereafter will not exceed nine percent of the base premiums scheduled to be made over the lesser of 15 years, the premium paying period or the anticipated joint life expectancy of the insureds. Moreover, the aggregate sales loads assessed under the Policies will not exceed the sum of the sales loads that would have been assessed if the increase in face amount or improvement in plan of insurance resulting from the increase in premium were provided under a separate Policy. Applicants submit that the proposed sales load pattern is consistent with the purposes of Section 27(a)(1) of the Act and Rule 6e–(b)(13)(i).

Increase in Proportionate Amount of Sales Load After Policy Adjustments or Payment of Nonrepeating Premiums

28. As noted above, Applicants propose to impose a new first year sales load whenever the owner of a Policy requests an adjustment involving an increase in base premium. The collection of a new first year sales load against the increase in the base premium will result in an increase in the percentage sales load deducted from the total base premium in violation of the Act and Rule, except in the unusual circumstance where a sales load in the same proportionate amount was deducted from the immediately preceding payment. An increase in the percentage sales load deducted from the total base premium also may occur as a result of the payment of a nonrepeating premium or a policy adjustment involving a decrease in premium. For example, if the 7 percent basic sales load were to be deducted from the nonrepeating premium, the payment of such a premium during the first year following issuance of the Policy or a policy adjustment would result in an increase in percentage sales load, since the nonrepeating premium would be subject only to the basic sales load of 7 percent while the next scheduled premium would be subject to a new first year sales load. If, at the time of payment of the nonrepeating premium, the waiver of the basic sales charge, presently contemplated, were in effect, the payment of such premium at any time would result in an increase in the percentage sales load, since the next scheduled payment would be subject to a sales load. Finally, an adjustment during the first Policy year which reduces the amount of the premium from a greater than whole life premium will result in an increase in percentage sales load, since the portion of any premium in excess of the whole life premium is subject to the basic sales load only. Applicants request exemption from Section 27(a)(3) of the Act and paragraph (b)(13)(ii) of Rule 6e–2 to the extent necessary to permit increases in the proportionate amount of sales load deducted from premiums following certain policy adjustments or the payment of nonrepeating premiums.

29. The reasons for allowing a new first year sales load following policy adjustments involving an increase in base premium apply also to this requested ''stair-step'' relief. Applicants assert that exemptive relief to permit an increase in percentage sales load after the payment of a nonrepeating premium is appropriate in order to encourage the payment of such premiums and to avoid assessing a sales load in excess of the charge Minnesota Mutual considers necessary to provide for its anticipated sales expenses. Similarly, exemptive relief to permit a percentage increase in sales load upon a reduction in premium under plans which are greater than whole life is justified by the advantage to Policy owners in having a sales load schedule in which the first year sales load is confined to the whole life premium. Applicants submit that it is not in the interest of investors to require the imposition of sales loads in excess of those deemed necessary by investment companies and their sponsors.

Deduction of Charges From Account Assets

30. Applicants propose to deduct certain charges from assets of the Account other than for administrative services, such as charges for the cost of insurance and charges for the face amount guarantee. Applicants request exemption from Sections 26(a) (1) and (2) and 27(c)(2) of the Act and paragraph (b)(13)(iii) of Rule 6e–2 to the extent necessary to permit the deduction from Account assets of the charges it proposes to make under the Policies for the cost of insurance and the face amount guarantee.

31. Applicants argue that the Commission appears to have recognized the appropriateness of deducting cost of insurance charges and charges for guaranteed death benefit risks from separate account assets. Paragraphs (b)(13)(iii) (E) and (F) of Rule 6e–3(T) provide exemptive relief to permit the

deduction of cost of insurance charges and charges for guaranteed death benefit risks, respectively, for flexible premium variable life policies, and the Commission's proposed amendments to Rule 6e–2 would also expressly provide such relief. Here, Minnesota Mutual's charge for the cost of insurance is in an amount not in excess of the cost of insurance derived from the 1980 Table, and its charge for the face amount guarantee at a maximum rate of 3 cents per thousand dollars of face amount per month, a charge for the risks associated with the guaranteed death benefit, is reasonable in light of the risks assumed. Minnesota Mutual has prepared a memorandum setting forth the basis for its conclusion as to the face amount guarantee charge, including the methodology it used to support that conclusion, which is based on an analysis of the pricing structure of the Policies and an analysis of the various risks associated with the Policies, including the special risks arising from the ability to adjust a Policy using the higher of its tabular cash value and the Policy value. Minnesota Mutual will keep and make available to the Commission upon request a copy of such memorandum. Minnesota Mutual also represents that the sales charges under the Policies are excepted to cover the costs of distributing the Policies.

Conversion to Fixed Benefit Adjustable Life Policy

32. A principal feature of the Policies is that the initial face amount of insurance may change either automatically or at the initiative of the Policy owner. As has been noted, Policies may be issued with a scheduled reduction in face amount. They may also be issued with a scheduled increase in face amount if they are projected to become paid-up on a date other than a Policy anniversary. In addition, when a Policy becomes paid-up, Minnesota Mutual will determine a new face amount, which will be at least equal to the face amount previously in effect. Finally, an owner may increase or decrease the face amount of a Policy, subject to certain limitations, as part of a Policy adjustment, and a change in face amount will occur in connection with the automatic conversion from the protection option death benefit to the cash option death benefit at the Policy anniversary nearest the younger insured's age 70.

33. Applicants assert that the conversion right required by the Rule is satisfied by the owner's right under the Policy to transfer all of the Policy value to the guaranteed principal account without charge, and to thereafter allocate all new premiums to the guaranteed principal account. Since a Policy, the benefits of which are based exclusively on the guaranteed principal account, may have a plan of insurance other than for the whole life, and have a face amount at the time the owner exercises this ''conversion'' right either greater or less than the initial face amount of the Policy, the conversion right provided by the Policies may not satisfy the requirements of paragraph (b)(13)(v)(B). Applicants request exemption from Section 27(d) of the Act and paragraph (b)(13)(v)(B) of Rule 6e–2 to the extent necessary to permit the conversion right provided by the Policies to have a death benefit equal to the Policy's then current face amount and a plan of insurance which may be less than for the whole of life.

34. The conversion right to the Policies in essence provides a Policy owner with the right to obtain fixed benefit coverage that most closely corresponds to the owner's then current variable life insurance coverage. This right is not confined to the two year period contemplated by the Rule, but is available so long as a Policy is in force and all scheduled premiums have been paid. In view of the adjustable features of the Policies, the current face amount and plan of insurance presumably reflect the owner's judgment as to the type and amount of insurance coverage most appropriate in view of his or her current circumstances. In Applicants' opinion, the same type and amount of fixed benefit coverage should be available upon conversion. Moreover, to require the owner of a Policy having a term plan of insurance to take a whole life policy upon exercise of the conversion right could well discourage exercise of the right, as it would force the owner to accept a policy design differing substantially from the one he or she has.

35. The proposed amendments to Rule 6e–2 would revise paragraph (b)(13)(v)(B) so as to permit conversion to a fixed benefit policy other than for the whole of life. The amendment would permit the life insurer ''to convert to any type of life insurance policy other than a flexible or scheduled contract, rather than to covert only to a whole life insurance policy * * *.'' Similar flexibility is presently available for flexible premium contracts under the comparable provisions of paragraph (b)(13)(v)(B) of Rule 6e–3(T). In addition, Rule 6e–3(T) allows conversion to a policy with either the same death benefit or net amount at risk as the flexible premium contract at the time of conversion as opposed to the date of issue. The absence of a similar provision in Rule 6e–2 may reflect, not only the fact that Rule 6e–2, unlike Rule 6e–3(T) does not contemplate increases in insurance benefits at the request of the contract holder, but also a determination that the conversion right should not be impaired by poor investment performance. As the changes in face amount under the Policies will never be as a result of poor investment performance, there is no valid reason for restricting the conversion right to the death benefit selected at issue.

Modified Free Look Right Procedures

36. Applicants request relief from Section 27(f) of the Act and Rules 27f–1 and 6e–2(b)(13)(viii)(C) thereunder to the extent necessary to permit personal delivery to policy owners of free look right notices which contain information comparable to that required by Form N–27I–2, but which are not in the format required by that Form. Rule 6e–3(T)(b)(13)(viii) provides an exemption from Section 27(f) and Rule 27f–1 with respect to flexible premium variable life insurance contracts conditioned on the provision of free look rights substantially identical to those prescribed in rule 6e–2. Rule 6e–3(T)(13)(viii)(C), however, permits those involved with issuing and selling flexible premium variable life insurance policies: (a) to modify the free look notice format provided in Form N–27I–2, provided that the information presented in the modified notice is comparable to that required by Form N27I–2; and (b) send the free look notice either by personal delivery or first class mail.

37. Applicants submit that whether a life insurance policy has a scheduled premium structure or a flexible premium structure is irrelevant to the design or method of delivery appropriate for free look right notices associated with the policy. In either case, the free look right and the notices thereof are occasioned by a sales load structure that imposes on some payments a sales load of greater than 9 percent of the payment. So long as an adequate free look right and reliable means of providing policy owners specific notice of that right are present, the particular design of the notice or the mode of delivery selected should be of no consequence. Applicants assert that the Commission appears to have recognized this by proposing to amend paragraph (b)(13)(viii)(C) of Rule 6e–2 to afford persons involved with issuing and selling scheduled premium policies the same degree of free look notice format and delivery flexibility as presently afforded in connection with flexible premium policies.

Offer of Exchange

38. The owners of a Policy may ask, so long as both insureds are alive, to exchange the Policy for two individual policies insuring each of the insureds separately. Since the individual policies may be variable life policies issued by a separate account of Minnesota Mutual, including the Account, which is registered under the Act as a unit investment trust, the exchange provision may be viewed as an offer of exchange within the prohibition of Sections 11 (a) and (c). Applicants request an order pursuant to Section 11 of the Act permitting the exchange of a Policy for two individual variable insurance policies in accordance with the provision described above.

39. An exchange pursuant to the Policy provision is subject to satisfactory evidence of insurability of both insureds. If the exchange is permitted by Minnesota Mutual, each of the new individual policies issued will have one-half of the death benefit, Policy value and Policy loan of the Policy surrendered, and the scheduled premiums to be paid to the new policies will be based on the age, gender and risk class of each insured on the date of exchange. The purpose of Section 11 is to prevent ''switching.'' ''Switching'' is a term of art that refers to the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. Because the new policies together will have a policy value equal to the policy value of the surrendered security, the exchange will be made on the basis of the relative net asset values of the policies involved. Furthermore, no charge, administrative or otherwise, will be made in connection with the exchange, and no sales charge will be imposed under the new policies on policy values transferred to the new policies in connection with the exchange. Applicants conclude that the terms of the proposed offer of exchange do not involve any of the switching abuses that led to the adoption of Section 11 of the Act.

Class Relief

40. Extending the relief herein requested to Future Contracts, Future Accounts and Future Underwriters is appropriate in the public interest. An order so providing should promote competitiveness in the variable life insurance market by eliminating the need for filing redundant exemptive applications, thereby reducing Minnesota Mutual's costs. The delay and expense of repeatedly seeking exemptive relief for substantially similar contracts, new separate accounts or new principal underwriters could impair Minnesota Mutual's ability to take effective advantage of business opportunities that might arise. There is no benefit or additional protection afforded to investors by requiring Applicants to repeatedly seek exemptive relief with respect to the same issues addressed in this application.

Conclusion

For the reasons summarized above, Applicant represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18173 Filed 7–17–96; 8:45 am]

BILLING CODE 8010–01–M

Agency Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [61 FR 36944, July 15, 1996].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: July 15, 1996.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Wednesday, July 17, 1996, at 10:00 a.m., has been cancelled.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

July 15, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–18300 Filed 7–15–96; 4:41 pm]

BILLING CODE 8010–01–M

[Release No. 34–37421; File No. SR–CBOE–96–02]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Liability of the Exchange and its Directors, Officers, Employees, and Agents, Precluding Certain Types of Legal Actions by Members Against Such Persons, and Requiring Members to Pay the Exchange's Costs of Litigation Under Specified Circumstances

July 11, 1996.

I. Introduction

On January 18, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend various Exchange rules pertaining to the liability of the Exchange, to adopt new Rule 6.7A prohibiting a member from instituting certain types of legal proceedings against Exchange officials, and to adopt new Rule 2.24 requiring a member to pay the Exchange's costs of litigation under specified circumstances.

Notice of the proposed rule change appeared in the Federal Register on February 27, 1996.[3] No comments were received on the proposed rule change.[4] This order approves the CBOE's proposal.

II Background and Description

A. Exchange Liability

The principal rule concerning Exchange liability is Rule 6.7(a), which currently provides that the Exchange shall not be liable to members, member organizations, or to associated persons for loss, damages, or claims arising out of the use or enjoyment of the facilities afforded by the Exchange, whether the loss, damages, or claims resulted from negligence or other unintentional errors or omissions, or from a cause not within the control of the Exchange. The proposed amendment to Rule 6.7(a) clarifies that, except as otherwise specifically provided in the rules of the Exchange, neither the Exchange nor its

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 36863 (February 20, 1996), 61 FR 7285 (February 27, 1996).

[4] The CBOE submitted a letter regarding the enforceability of the proposed rules under state law. *See* letter from Michael L. Meyer, Schiff Hardin & Waite, to Matthew Morris, Division of Market Regulation, Commission, dated June 27, 1996.

directors, officers, committee members, employees, or agents shall be liable to members or their associated persons except where the Exchange's liability is attributable to willful misconduct, gross negligence, bad faith, fraud, or criminal acts.

The proposed amendment to Rule 6.7 also incorporates, without material change, certain provisions which are currently set forth in Rules 23.14 and 24.12 to the effect that the Exchange is not liable for errors, omissions, or delays in collecting or disseminating various kinds of data, and the Exchange does not warrant such data. According to the Exchange, the purpose of moving these limitations of liability and disclaimers of warranty in Rule 6.7 is to place related subjects in a single rule.

In addition, the CBOE proposes to make non-substantive amendments to Rules 7.11, 23.14, and 30.75, and to delete Rule 24.12 in order to eliminate provisions that duplicate what is set forth in Rule 6.7, as well as to clarify and conform the language of all of the rules pertaining to the liability of the Exchange.

The CBOE also proposes certain changes to Interpretation and Policy .03 to Rule 6.7, which currently limits the Exchange's liability with respect to orders routed through the Exchange's Order Routing System (''ORS'') once the orders are printed at printers located on the Exchange floor. These changes clarify the description of the printers to which orders may be routed, and limits the liability of the Exchange once an order routed through ORS appears on a public automated routing (''PAR'') system terminal screen.

B. Legal Proceeding Against Exchange Directors, Officers, Employees, or Agents

The proposed amendment adds new Rule 6.7A, which prohibits a member or associated person from instituting a lawsuit or any other legal proceeding against any director, officer, employee, agent, or other official of the Exchange or any subsidiary, for actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary. Rule 6.7A, however, does not apply to violations of the federal securities laws where a private right of action exists, to appeals of disciplinary actions, or to other actions by the Exchange as provided for in the rules of the Exchange. According to the Exchange, the purpose of disallowing lawsuits or other legal proceedings against Exchange officials or agents when they are acting on Exchange business is to eliminate the potential exposure to personal liability of such persons, which impairs their ability to perform their duties.

C. Exchange's Cost of Defending Legal Proceedings

The proposed amendment adds new Rule 2.24, which requires a member or associated person who fails to prevail in a lawsuit or other legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay all reasonable expenses, including attorneys' fees, incurred by the CBOE in its defense during such proceeding. This provision is applied only in the event that the Exchange's expenses exceed $50,000. According to the Exchange, this rule is intended to discourage unfounded, vexatious litigation against the CBOE where the Exchange's costs of defense are significant, without having any undue chilling effect on legitimate claims or members. The proposed rule would apply to all types of legal proceedings that might be instituted by members against the Exchange or any of its directors, officers, committee members, employees, or agents, except that it expressly would not apply to disciplinary actions by the Exchange or to appeals therefrom, to other administrative appeals of Exchange actions, or to any specific instance where the Board has granted a waiver of this provision.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[5] Specifically, the Commission believes that by limiting the liability of the Exchange and its directors, officers, employees, and agents, by precluding certain types of legal actions by members against such persons individually, and by discouraging frivolous lawsuits against the Exchange, the costs of the Exchange in responding to claims and lawsuits will be reduced, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and for protecting investors and the public interest.

A. Exchange Liability

The Commission believes the rule change limiting the liability of the Exchange and its directors, officers, committee members, employees, and agents, to situations attributable to willful misconduct, gross negligence, bad faith, fraud, criminal acts, or actions otherwise specifically prohibited in the rules of the Exchange, will adequately preserve members' right to pursue actions in circumstances where the Exchange and its officials should be held accountable, or where there has been a violation of the federal securities laws.

In addition, the Commission believes that the CBOE's proposal to: (i) Incorporate Rules 23.14 and 24.12 into Rule 6.7; (ii) make non-substantive amendments to Rules 7.11, 23.14, and 30.75; (iii) delete Rule 24.12; and (iv) update Interpretation and Policy .03 to Rule 6.7, will clarify the application of the principal rules governing Exchange liability.

B. Legal Proceedings Against Exchange Directors, Officers, Employees, or Agents

The Commission believes that the rule change prohibiting members from instituting certain types of legal proceedings against Exchange officials should be approved. Specifically, the rule change prohibits members and associated persons from instituting lawsuits or any other legal proceeding against any director, officer, employee, agent, or other official of the Exchange or any subsidiary of the Exchange, for actions taken or omitted to be taken by these parties in connection with official business of the Exchange or any subsidiary. New Rule 6.7A, however, does not impair a members' ability to initiate legal action based upon violations of the federal securities laws for which a private right of action exists, appeals of disciplinary actions, or other actions by the CBOE as provided for in the Exchange's rules. The Commission believes that new Rule 6.7A is consistent with the Act because it will help to ensure that the covered persons will be able to carry out their duties under the Act, and to enforce compliance with the Act and the rules thereunder, as well as the rules of the Exchange, without the threat of personal liability.

C. Exchange's Cost of Defending Legal Proceedings

The Commission believes that the rule change requiring members or associated persons who fail to prevail in a lawsuit or other legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay all reasonable expenses, including attorneys' fees, incurred by the CBOE in its defense during such proceedings if

[5] 15 U.S.C. § 78f(b)(5) (1988).

such expenses exceed $50,000, is consistent with Section 6(b)(4) of the Act.[6] Section 6(b)(4) requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

The Commission believes that because the funds to pay the legal expenses incurred by the Exchange in defending legal suits are generated, in part, by membership fees, the rule change reflects a reasonable business decision by the membership to shift the financial burden of litigation to the responsible member under certain circumstances. Moreover, as the Exchange's legal expenses must be reasonable and must accrue to at least $50,000 before a member would be obligated to compensate the Exchange, the Commission believes that the rule change should not provide an undue disincentive to litigation, in so far as it will permit the discovery needed to assess the merits of the members' cases.

The Commission also notes that new Rule 2.24 specifically excludes disciplinary actions brought by the Exchange, other administrative appeals of Exchange actions, as well as any other specific instance where the Board grants a waiver of this rule. The Commission believes that this provision will ensure that members will be able to freely pursue their right to appeal any action brought by the Exchange for violations of its rules.[7]

IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to limit the liability of the Exchange and its directors, officers, employees, and agents, to preclude certain types of legal actions by members against such persons individually, and to require members to pay the Exchange's costs of litigation under specified circumstances is consistent with the requirements of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–96–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[6] 15 U.S.C. § 78f(b)(4) (1988).

[7] The Commission notes that if the minimum amount in the fee provision were substantially lower it might have a more difficult time concluding that the provision was consistent with Section 6(b)(4). This is because such a lower threshold amount could be found to represent an inequitable allocation of fees to the disadvantage of certain members.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18172 Filed 7–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37424; File No. SR–NASD–96–20]

Self-Regulatory Organizations; Order Granting Temporary Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Changes in the Structure of the NASD Board of Governors

July 11, 1996.

On May 28, 1996,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder.[3] The rule change amends the NASD By-Laws to conform them to the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries'' (''Delegation Plan'').[4]

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 37282, June 6, 1996) and by publication in the Federal Register (61 FR 29777, June 12, 1996). One comment letter was received. This order grants accelerated approval to the proposed rule change for a period of 120 days.

I. Background

In 1995, the NASD Board of Governors (''Board'') appointed the Select Committee on Structure and Governance (''Select Committee'') to examine the corporate structure, governance, and functions of the NASD and to recommend changes and improvements to enable the NASD to meet its regulatory and business obligations. In September 1995, the Select Committee recommended, among other things, that the NASD establish two distinct subsidiaries; one to perform the regulatory functions of the NASD and the other to run The Nasdaq Stock Market (''Nasdaq''). The Select Committee recommended that each subsidiary have an independent Board of Directors with at least 50% public representation and that the NASD remain as parent corporation overseeing the operations of both subsidiaries. The Select Committee recommended that the NASD Board of Governors be composed of a majority of public directors.

In January 1996, the NASD created a new subsidiary, NASD Regulation, Inc. (''NASD Regulation'') to provide regulation and member and constituent services, with the NASD retaining responsibility for general oversight over the effectiveness of the self-regulatory and business operations of the NASD and its major subsidiaries, Nasdaq and NASD Regulation, and final policymaking authority for the association as a whole. The NASD also adopted Select Committee proposals to restructure and reduce the size of the NASD Board and to implement policies to ensure a balance of non-industry and industry representation on the Nasdaq and NASD Regulation Boards.

On April 11, 1996, the Commission granted temporary approval for a period of 90 days to: (i) Amendments to Article VII of the NASD By-Laws to create a national nominating committee to nominate persons to serve on the Board of Governors and reconstitute the Board as a majority non-industry Board; [5] (ii) NASD Rule 130 providing for the delegation of the authority to act on behalf of the NASD to NASD Regulation and Nasdaq pursuant to the Delegation Plan; and (iii) the Delegation Plan.[6] The Delegation Plan sets forth the purposes,

[1] On June 5, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amends Article VI, Section 5 to clarify that, in a contested election, the term of office of a candidate certified by the National Nominating Committee for inclusion on the ballot for the election of Governors pursuant to Article VI, Section 7(c) would be identical to the term of office of a candidate nominated by the National Nominating Committee pursuant to Article VI, Section 7(c). Amendment No. 1 also amends Article VI, Section 7(a) to clarify that any person elected to the Board of Governors must be nominated or certified by the National Nominating Committee. *See* Letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated June 4, 1996).

On July 2, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 provides the final report of the NASD membership with respect to the proposed rule change. 2,227 valid ballots were received from NASD members. 2,101 voted to approve the proposed rule change, 117 voted to disapprove the proposed rule change and 9 did not vote.

On July 10, 1996, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 requests temporary approval of the proposed rule change for a period of 120 days. *See* Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (''Release 34–37107'').

[5] Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) (''Release 34–37106'').

[6] Release 34–37107.

functions and governance procedures of the three corporations working together.

The rule change approved today is intended to ensure that the NASD possesses the requisite corporate authority to continue the restructuring necessary to implement the principles articulated in the report of the Select Committee.

II. Description of Proposed Rule Change

The rule change approved today amends the NASD By-Laws to make the By-Laws consistent with the Delegation Plan granted temporary approval today by the Commission [7] by providing for the creation of a national nominating committee to identify and nominate for election industry and non-industry persons to serve on the Board and by deleting sections and language now unnecessary or inappropriate as a result of the Delegation Plan. Included in the proposed rule change is the deletion of nearly all references to the Districts and local administration, because responsibility for the local administration of regulatory affairs under the Delegation Plan has been assigned to NASD Regulation.[8] The amended By-Laws also conform terms and rule citations to those used in the reorganized *NASD Manual*, including, for example, replacing the term ''Code of Procedure'' with ''Procedural Rules,'' [9] and make various miscellaneous clarifying corrections to the By-Laws. Finally, all references to the NASD ''Certificate of Incorporation'' are being changed to the ''Restated Certificate of Incorporation'' to reflect that the Certificate of Incorporation has been amended to be consistent with the changes previously adopted and proposed herein to the By-Laws.

A. Definitions

''Delegation Plan'' is the term by which the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries'' will be known. ''Corporations'' and ''Boards'' are the terms that will refer to the NASD, its subsidiaries and their boards of directors.

In addition, the definition of ''Act'' is revised to match the definition in the Delegation Plan, and the definition of ''rules of the Corporation'' is revised to be consistent with the various references to rules in the reorganized *NASD Manual.*[10]

Finally, the definition of ''bank'' is reviewed to expand the reference to national banks to include the citation that such banks are included in the definition that are ''under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87–722 (12 U.S.C. 92a) * * *.''

B. Applications for Membership

Article III, Section 1(a)(3) is amended to extend to the Nasdaq and NASD Regulation Boards, committee members, officers, and employees protection from liability for action taken within the scope of their authority, except for willful malfeasance. *See also* Article IV, Sec. 2(a)(2) of the By-Laws.

C. Affiliated Securities Associations

The NASD has deleted Article V governing the affiliation of other Registered Securities Associations with the NASD. Such affiliations remain authorized by Section 15A of the Act.

D. Board of Governors

A majority of the changes to the By-Laws affect the powers and authority of the Board of Governors, its size, composition and the manner of its selection. The NASD has added a provision to the By-Laws setting forth the authority of the Corporation to delegate functions, provided that such delegations are not inconsistent with the Delegation Plan.

The NASD also is eliminating the special committee formerly established to take action in case of emergencies or extraordinary market conditions when the full Board is not available. The amended By-Laws vest authority to take action under emergency conditions with the full Board, or with any person or persons designated by the Board.

The amended By-Laws reconstitute the Board as a smaller, majority Non-Industry [11] Board, comprising the Chief Executive Officer, one or more Non-Industry Governors representative of issuers and investors and not associated with an NASD member, and one or more Industry Governors. The Commission also is granting approval to amendments reducing the minimum size of the Board from 25 to 5.

Another amendment to the By-Laws requires that the Board of Governors be composed in a manner consistent with the Delegation Plan and Section 15A(b)(4) of the Securities Exchange Act of 1934. This is intended to ensure that the Board will at all times include full representation of issuers, investors, and the securities industry, with a Non-Industry majority.

Another amendment to the By-Laws provides that, except for the Chief Executive Officer, no Governor may serve more than two consecutive three-year terms except for a Governor that has been appointed to fill a term of less than one year. Such a Governor may serve up to two consecutive terms following the expiration of that Governor's current term. The filling of vacancies cannot be inconsistent with the Delegation Plan.

Consistent with Section I.C. of the Delegation Plan, which described the procedure for the nomination and election of NASD Governors, the By-Laws have been amended to provide that the members of the NASD Board of Governors shall be elected by a plurality of the votes of the members of the NASD that are present in person or represented by proxy at the annual meeting of the NASD and entitled to vote. The Board is further authorized to establish a National Nominating Committee, which will consist of six or more persons meeting qualifications to be established by the Board in conformance with the Delegation Plan,[12] to nominate or certify

[7] *See* Securities Exchange Act Release No. 37425 (July 11, 1996) (granting accelerated approval to amended Delegation Plan for 120 days) (''Release 34–37425'').

[8] In recognition of this assignment of responsibility, the Board of Directors of NASD Regulation adopted a resolution at its May 13, 1996, meeting to appoint the Districts and District Committees as Districts and District Committees of NASD Regulation.

[9] The new version of the *NASD Manual* is divided into four sections (Administrative, Corporate Organization, Rules of the Association, and SEC Rules and Regulation T) and includes an expanded key word index. *See* Notice to Members 96–25 (April 1996).

[10] The definition published for member vote in Special Notice to Members 96–35, attached as Exhibit 2 to the proposed rule change, has been modified to eliminate certain rule language that would not have been consistent with the reorganized *NASD Manual.*

[11] The Delegation Plan defines ''Non-industry'' Governors, Directors or Committee Members as (a) Public Governors; (b) officers and employees of issuers of securities listed on The Nasdaq Stock Market or traded in the over-the-counter market; (c) persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-members affiliates (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employees owners of the affiliate); (d) employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity; and (e) other individuals who would not be Industry Governors, Directors or Committee Members. *See* Release 34–37425, *supra* note 7.

[12] *See* Release 34–37425, *supra* note 7. The Delegation Plan provides that the National Nominating Committee shall be composed of at least 6 and not more than 9 members, equally balanced between Industry and Non-industry Committee Members (including at least 2 Public Committee Members), with 2 members of the National Nominating Committee selected by NASD, NASD Regulation, and Nasdaq, respectively. The National Nominating Committee shall propose to the NASD Board one or more nominees for each vacant or new Governor position, and for each Director position on the Boards of Directors of the Subsidiaries.

one or more persons for each governorship up for election. Any person nominated or certified for election to the Board must demonstrate to the National Nominating Committee that that person meets the applicable qualifications for the position.

The By-Laws also have been amended to permit members of the Board or any committee of the NASD to participate in a meeting by communications facilities that permit the parties to hear and speak to each other. Participation in a meeting constitutes the person's presence at a meeting. Board members continue to be prohibited from voting by proxy at any meeting.

E. Consistency With the Delegation Plan

The By-Laws have been amended in several places to ensure that certain powers of the NASD Board must be exercised in a manner consistent with the requirements of the Delegation Plan. For example, those provisions of the By-Laws granting the Chief Executive Officer ex-officio membership in all committees have been deleted as inconsistent with the requirements of the Delegation Plan.

In addition, amendments to the By-Laws provide that determinations of the NASD Board regarding the employment of administrative staff and the establishment of committees shall not be inconsistent with the Delegation Plan.

III. Comments Received

As noted above, the Commission received one comment concerning the proposed rule change.[13] The Singer Letter objects to the proposal to require applicants for NASD membership to agree to exculpate the Nasdaq and NASD Regulation Boards, committee members, officers, and employees from liability for action taken within the scope of authority, except for willful malfeasance. The By-Laws would continue to require that applicants exculpate the NASD Board, its committee members, officers, and employees from such liability. The Singer Letter states that ''the NASD seeks to obtain unwarranted, virtual, absolute immunity for itself and its staff as the price for NASD membership or registration.'' [14] The Singer Letter states that the public interest is clearly not served when a self-regulatory organization can insulate itself from wrongdoing except in cases where the misconduct rises to the level of willful malfeasance. The Singer Letter urges that the scope of exculpation from liability be limited to action taken ''while discharging necessary and proper prosecutorial or adjudicatory functions.'' The Commission notes that this provision is currently a part of the NASD By-Laws, and is not substantively amended by this filing. The Commission also notes that the scope of conduct addressed by the provision is limited to action taken within the scope of the actor's authority. The Commission also notes that the standard proposed by the Singer Letter would subject NASD, NASD Regulation and Nasdaq personnel to personal liability for ordinary negligence in performing regulatory functions required to carry out the purposes of the Act or required to enforce compliance by NASD members and their associated persons with the provisions of the Act.[15] The Commission believes that such liability would have a chilling effect upon the actions of such personnel and would hinder the NASD's ability to discharge its regulatory responsibilities under the Act.[16]

IV. Commission Findings

The Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act[17] in that the restructured organization will: (1) Provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws; (2) provide for the fair representation of members, issuers and investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

The NASD has requested that the Commission approve the proposed rule change on or before July 11, 1996, which is prior to the 30th day following publication of notice of the filing of the proposed rule change in the Federal Register, in order to permit the uninterrupted authorization of those corporate actions necessary to effectuate the Delegation Plan.

Pursuant to Section 19(b)(2) of the Act,[18] the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication in the Federal Register. The proposed rule change will permit the NASD to continue to carry out the functions and organize itself in the manner contemplated by the Delegation Plan, which is intended to enable the NASD to meet its regulatory and business obligations. Because the Commission believes that the proposed rule change facilitates the ability of the NASD to manage its affairs in a manner that enhances its ability to carry out the purposes of the Act or required to enforce compliance by NASD members and their associated persons with the provisions of the Act, the Commission believes that the rule filing should be approved without delay, for a 120 day period.

V. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file

[13] Letter from Bill Singer, Esq., Singer, Bienenstock, Zamansky, Ogele & Selengut, LLP. to Jonathan G. Katz, Secretary, Commission, dated July 1, 1996 (''Singer Letter'').

[14] *See* Singer Letter, *supra* note 13.

[15] *See* 15 U.S.C. 78*o*–3(b) (1)–(2).

[16] *See id.* In addition, the Commission notes that the Delaware General Corporation Law (''DGCL'') permits a Delaware corporation such as the NASD to provide its directors and officers with broad protection from liability. The DGCL permits a corporation to either eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty, provided that such provisions do not eliminate or limit the liability of a director for, among other things, (i) Breach of the director's duty of loyalty to the corporation and its stockholders, or (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law. *See* 8 Del. Code § 102(b)(7). Furthermore, the DGCL permits corporations to indemnify officers against expenses, judgments, fines and settlement amounts reasonably incurred if the officer acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the corporation. *See* 8 Del. code § 145 (a)–(b).

[17] 15 U.S.C. 78*o*–3.

[18] 15 U.S.C. 78s(b)(2).

number in the caption above and should be submitted by August 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR–NASD–96–20 be, and hereby is, approved effective immediately, for a period of 120 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18169 Filed 7–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37425; File No. SR–NASD–96–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Allocation and Delegation of Authority and Responsibilities by the National Association of Securities Dealers, Inc., to NASD Regulation, Inc., and The Nasdaq Stock Market, Inc.

July 11, 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 July 2, 1996,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change for a period of 120 days.

[1] On July 8, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended the language of proposed new Subsections II.C.4. and III.C.3 of the Delegation Plan to clarify that it is proposed that the NASD Board of Governors have authority to determine to both call for review or not call for review a matter of the subsidiary Board during the 15-day period provided for consideration by the NASD Board.

On July 10, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 requests temporary approval of the proposed rule change for a period of 120 days. See Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its rules to: (1) Add new Rule 0130 to the NASD's rules delegating to the subsidiaries of the NASD, NASD Regulation, Inc. (''NASDR'') and The Nasdaq Stock Market, Inc. (''Nasdaq''), the authority to act on behalf of the Association as set forth in a Plan of allocation and Delegation adopted by the NASD Board of Governors and approved by the Commission pursuant to its authority under the Act; and (2) adopt a Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Plan'') setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR and Nasdaq, following the reorganization of the NASD.

The proposed rule change submitted herein, with exceptions, was previously filed with the Commission in SR–NASD–96–16 and was simultaneously published for comment and approved by the Commission on a temporary basis for a period of 90 days.[2] Release 34–37107 contained the full text of the proposed rule change, with the exception of three amendments thereto. Set forth below are excerpts from the Plan, marked to show the three amendments. Additions to the Plan are in italics; deletions are in brackets.[3]

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

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C. Board of Governors

1. Composition: The NASD Board of Governors (''NASD Board'') shall be composed of at least Nine (9) and no more than thirteen (13) Governors, a majority of whom shall be Non-industry (including at least Two (2) Public Governors). The Chief Executive Officer (''CEO'') of NASD shall be a Governor. In the event that the NASD Board shall consist of Eleven (11) or more governors, at least Three (3) shall be Public Governors.

2. Election Procedures

a. Commencing with the selection of Governors to take office on April of 1997, Governors (except the CEO of NASD) shall be elected by a majority vote of those members of the NASD casting ballots on a slate of nominees presented to the NASD membership by the National Nominating Committee for election by secret ballot.

b. National Nominating Committee

(1) The National Nominating Committee shall be composed of at least Six (6) and not more than Nine (9) members, equally balanced between Industry and Non-industry Committee Members (including at least Two (2) Public Committee Members). In the event that the Nominating Committee shall consist of Seven (7) or more members at least Three (3) shall be Public Committee Members. If at any time there shall be an odd number of members of the National Nominating Committee, Non-industry Committee Members shall be in the majority. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. Two members of the National Nominating Committee shall be selected by each of the Subsidiaries and the NASD. No more than three of the Committee Members and no more than two of the Industry Committee Members shall be current members of the NASD Board or of the Board of Directors of one of the Subsidiaries (collectively the ''Association Boards''). Any member of the National Nominating Committee who is a current member of any Association Board shall be in his/her final year of service on any Association Board.

(2) Members of the National Nominating Committee shall be appointed annually by the NASD Board and may be removed for cause by a majority vote of the NASD Board.

(3) The National Nominating Committee shall propose to the NASD Board one or more nominees for each vacant or new Governor position, and for each Director position on the Boards of Directors of the Subsidiaries.

3. Contested Elections.

a. A candidate for the NASD Board who has not been nominated *pursuant to Section 2.b(3) above* may be [included on the ballot] *nominated by petition, for the term of office specified by the Board for the vacant governorship*, if the candidate presents duly executed petitions to the National Nominating Committee demonstrating that such candidate has the support of Two (2) percent of the members of the NASD.

b. A candidate for the NASD Board [shall] *may* be [certified by the National Nominating Committee and] included on the ballot only if the Committee certifies that the candidate's petitions

[2] Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (Release 34–37107).

[3] The Commission is separately approving SR–NASD–96–20, amending the NASD By-Laws consistent with the Plan, for a period of 120 days. *See* Securities Exchange Act Release No. 37424 (July 11, 1996).

are duly executed by the requisite number of members of the NASD and that the candidate meets the qualifications for the position to be filled, as defined in section I.A. above.
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II. NASD Regulation, Inc. (''NASDR'')
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C. NASDR Board Procedures

1. Disciplinary Actions—Any initial disciplinary decision of the Association, including dismissals, may be appealed to the NBCC within 15 calendar days, or called for review by the NBCC within 45 calendar days, as set forth in the Code of Procedure. A decision of the NBCC may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decisions of the NBCC or NASD Board. Any disciplinary decision not appealed or called for review shall become the final action of the Association upon the expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR, or NASD to the SEC.

2. Statutory Disqualification Decisions—any decision of the NBCC with respect to statutory disqualification may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decision of the NBCC or the NASDR Board. Any decision that is not called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR or NASD to the SEC.

3. Rule Filings—Any rule change adopted by the NASDR Board that imposes fees or other charges on persons or entities other than NASD members or that the NASDR Board refers to the NASD Board because in the view of the NASDR Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the NASDR Board does not refer a rule change to the NASD Board for review, the NASDR Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the NASDR Board's action but which is 15 calendar days or more following the action of the NASDR Board. During the process of developing rule proposals, NASDR staff shall consult with and seek the advice of Nasdaq staff before presenting any rule proposal to the NASDR Board.

4. Notwithstanding the requirements set forth in paragraphs 1 through 3 of this Section, the NASD Board may determine it is advisable to call or not call for review any disciplinary action, statutory disqualification decision, or rule change within the 15 calendar day period following the decision of the NBCC or the NASDR Board, as applicable.
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III. Delegation to Nasdaq
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C. Nasdaq Board Procedures

1. Listing/Delisting Decisions—Any initial decision of Nasdaq staff concerning the listing or delisting of securities on The Nasdaq Stock Market may be appealed to the Nasdaq Listing and Hearing Review Committee (''Listing Committee'') within 15 calendar days, or called for review by any member of the Listing Committee within 45 days, as set forth in the Code of Procedure. A decision of the Listing Committee may be called for review by any member of the Nasdaq Board not later than its meeting next following the Listing Committee's decision. A decision of the Nasdaq Board may be called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's decision but which is 15 calendar days or more following the decision of the Listing Committee or the Nasdaq Board. Any decision not appealed or called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. An issuer has the right to appeal a final action of the Association taken by the Listing Committee, Nasdaq Board or NASD to the SEC.

2. Rule Filings—Any rule change adopted by the Nasdaq Board that imposes fees or other charges on persons or entities other than NASD members or issuers or that the Nasdaq Board determines to refer to the NASD Board because in the view of the Nasdaq Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's action but which is 15 calendar days or more following the action of the Nasdaq Board. During the process of developing rule proposals, Nasdaq staff shall consult with and seek the advice of NASDR staff before presenting any rule proposal to the Nasdaq Board.

3. Notwithstanding the requirements set forth in paragraphs 1 and 2 of this Section, the NASD Board may determine it is advisable to call or not call for review any listing/delisting decision or rule change within the 15 calendar day period following the decision of the Listing Committee or the Nasdaq Board, as applicable.
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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Purpose of the Proposed Rule Change

Description of Plan

The Plan is organized in three principal parts, one for each of the three major entities that will constitute the reorganized NASD: the parent corporation, National Association of Securities Dealers, Inc.; the regulatory subsidiary, NASD Regulation, Inc.; and the stock market operating subsidiary, The Nasdaq Stock Market, Inc.[4] The

[4] The Plan does not discuss other wholly owned subsidiary corporations of the NASD, such as, the Securities Dealers Risk Purchasing Group, Inc. and Securities Dealers Insurance Co., Ltd. These and any other wholly owned subsidiaries of the NASD not described in the Plan do not perform any of the Association's regulatory functions or the operating functions related to the operation of The Nasdaq

Continued

Plan, the contents of which are self-explanatory, describes the purposes, functions, governance, procedures and responsibilities of each entity.

The first part of the Plan describes the parent corporation, National Association of Securities Dealers, Inc. The Plan sets forth the purpose and function of the NASD; the composition of the Board of Governors, including provisions relating to the qualifications for Governors, election procedures, creation of a National Nominating Committee,[5] term of office, vacancies and removal from office; the function, composition and reporting structure of the Audit Committee and the Office of International Review; the function and composition of the Management Composition Committee; and the Commission's access to and status of officers, directors, employees, books, records and premises of the subsidiaries.

The second part of the Plan describes the regulatory subsidiary, NASD Regulation, Inc. The Plan sets forth the delegation of authority to NASDR by the NASD; the purpose, function and authority of NASDR; the composition of and qualifications for members of the Board of Directors from 1997 forward, including provisions relating to election procedures; the function and composition the National Business Conduct Committee; the Board's procedures for reviewing disciplinary actions, statutory disqualification decisions and proposed rule change recommendations; and the Board's procedures for initiating actions.

The third part of the Plan describes the stock market operating subsidiary, The Nasdaq Stock Market, Inc. The Plan sets forth the delegation of authority to Nasdaq; the purpose and function of Nasdaq; the composition of and qualifications for members of the Board of Directors, including, provisions relating to election procedures and the authority of the Board; the Board's procedures for reviewing listing/delisting decisions, and rule change recommendations; the Board's procedures for initiating actions; the functions and composition of the Quality of Markets Committee; and functions of the Stockwatch Department.

Description of Amendments to Plan

The NASD is filing as part of this rule change three amendments to the Plan previously approved by the Commission in SR–NASD–96–16. The NASD is proposing to amend Article I.C.3 of the Plan that is titled *Contested Elections* in order to make clear that: (1) the term for which a candidate nominated by petition would be elected cannot subsequently be set by the Board of Governors of the NASD for a term shorter than that for which the Nominating Committee's candidate was proposed; and (2) the Nominating Committee certifies only that a nominee has satisfied the criteria for nomination by position in the category to be filled (*i.e.*, Public, Non-industry, Industry).

In addition, the NASD is proposing to add a new subparagraph to Sections II.C. and III.C of the Plan. Those sections currently specify that disciplinary, statutory disqualification, listing/delisting, and rule filing actions by the subsidiaries may be called for review by the NASD Board at the meeting next following the subsidiary's board meeting, so long as the NASD Board meeting is at least 15 calendar days after the subsidiary's Board meeting. With the exception of rule filings, an action by one of the subsidiaries that is *not* called for review will only become a final action of the NASD *after* the expiration of the 15-day period. Rule filings that are referred by a subsidiary to the NASD Board are permitted to be reviewed immediately. If, however, the rule filing is not so referred, the Board's determination to review or not review on its own motion must wait for the expiration of the 15-day period. While this mandatory time period ensures that the NASD Board will have sufficient opportunity to determine whether or not to call for review, there are situations where the NASD believes it to be in the public interest to expedite its determination whether or not to call for review a disciplinary, statutory disqualification or rule filing action by a subsidiary board and, if a matter is called for review, to take appropriate action. Examples of situations that might require such an expedited treatment include: proceedings to revoke the registration of a member or person associated with a member when the associated person has become subject to a statutory disqualification or the member or the person has failed to pay an arbitration award; disciplinary proceedings imposing sanctions of expulsion of a member or bar of an associated person; and rulemaking that results from a market emergency or otherwise requires submission to the Commission on an expeditious basis in the public interest.

(b) Statutory Basis for the Proposed Rule Change

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act[6] in that the terms of the Plan will provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. However, in connection with the publication for member vote of proposed amendments to the By-Laws to implement the Plan in Notice to Members 95–101 (December 11, 1995), attached as Exhibit 2 to proposed rule change SR–NASD–96–02, the NASD received three comments which were attached as Exhibit 4 to that proposed rule change. The NASD's statement on the comments received with respect to Notice to Members 95–101 is set forth in SR–NASD–96–02 and was published by the Commission in Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996). SR–NASD–96–02 proposed certain of the By-Law amendments issued for member vote in Notice to Members 95–101 (December 11, 1995) in order to permit the reorganization of its Board of Governors consistent with the Plan submitted in SR–NASD–96–16.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the

Stock Market. In addition the Plan does not address the NASD's ownership role in corporations such as the National Securities Clearing Corporation or the Depository Trust Company.

[5] The National Nominating Committee shall be composed of at least six and not more than nine members equally balanced between Industry and Non-Industry Committee Members (including at least two Public Committee Members). Two members of the National Nominating Committee shall be selected by each of the Subsidiaries and the NASD, of which it is anticipated that at least three will be Non-Industry Members.

[6] 15 U.S.C. 78*o*–3.

proposed rule change prior to the 30th day after publication in the Federal Register.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to carry out the purposes of the Act to comply with, and enforce compliance by its members and associated persons, with the provisions of the Act, the rules and regulations thereunder, and the rules of the NASD. Furthermore, the amendments are designed (with amendments to the NASD By-Laws simultaneously approved in SR–NASD–96–20, as set forth below) to assure a fair representation of the NASD's members, in the selection of its directors and administration of its affairs as well as comply with the public and non-industry participant requirements of the Act. It is envisioned that these rules and any subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(2) in particular and the Act in general.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will enhance the NASD's ability to carry out its regulatory obligations under the Act. The Commission believes that the proposed rule change is intended to accomplish certain allocations and delegations of authority necessary to reorganize the NASD, and establish as separate subsidiaries the NASDR and Nasdaq in accordance with the September 1995 recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations. The Plan, which is part of this proposed rule change, sets forth the purpose, functions, governance, procedures, and responsibilities of the NASD, the NASDR and Nasdaq following the reorganization of the NASD. The NASD's Board of Governors, which has been reorganized to be consistent with the proposed rule change, has held meetings to carry out the business of the Association. The subsidiaries also have held meetings of the Board of Directors of NASDR and Nasdaq in order to carry out the business of the subsidiaries during the 90 day period during which the Plan has been effective.

The proposed rule change, with the exception of the three amendments submitted herein, was previously filed with the Commission in SR–NASD–96–16 and was simultaneously published for comment and approved by the Commission on a temporary basis for a period of 90 days in Release 34–37107. The 90-day approval period expires on July 10, 1996. No comment letters concerning SR–NASD–96–16 were received by the Commission. The reorganization of the NASD Board of Governors is also reflected in proposed rule changes to the NASD By-Laws submitted in rule filing SR–NASD–96–20 and published for comment by the Commission in Securities Exchange Act Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996). The Commission is granting temporary accelerated approval to that proposed rule change.[7]

Accordingly, the Commission believes that accelerating the approval of the proposed rule change will benefit members and the public interest by fully implementing the reorganization of the NASD and its subsidiaries.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–96–29 be, and hereby is, approved for a period of 120 days.

[7] *See* Securities Exchange Act Release No. 37424 (July 11, 1996).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[Release No. 34–37426; File No. SR–NASD–96–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') Relating to the Application of the Primary Nasdaq Market Maker Rule to Initial Public Offerings

July 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 21, 1996, the National Association of Securities Dealers (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4612,[2] the NASD's Primary Nasdaq Market Maker Standards Rule (''PMM Rule''), to clarify and codify NASD interpretations with respect to the application of the PMM Rule to initial public offerings (''IPOs''). A more detailed explanation and description of these interpretations will also be provided in a Special Notice-to-Members to be issued contemporaneously with the submission of this filing. Proposed new language is italicized:

NASD Rule 4612 Primary Nasdaq Market Maker Standards

* * * * *

(g)(2) * * *

(B) For initial public offerings *(IPOs):*

(i) the market maker may register in the offering and immediately become a

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Prior to the revision of the NASD Manual, Rule 4612 was Section 49 of the NASD Rules of Fair Practice.

Primary Nasdaq Market Maker if it is a Primary Nasdaq Market Maker in 80% of the securities in which it has registered; provided, however, that if, at the end of the first review period, the Primary Nasdaq Market Maker has withdrawn on an unexcused basis from the security or has not satisfied the qualification criteria, it shall not be afforded a Primary Nasdaq Market Maker designation on any subsequent initial public offerings for the next 10 business days; or

(ii) the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(C) For purposes of subparagraph (B)(i) above:

(i) an issue ceases to be an IPO once it has traded on Nasdaq for five (5) business days; and

(ii) the applicable first review period for IPOs that come to market during the last five (5) business days of a month is the calendar month after the month in which the IPO commenced trading on Nasdaq.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements and Special Notice-to-Members may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 29, 1994, the SEC approved the NASD's short-sale rule applicable to short sales [3] in the Nasdaq National Market (''NNM'').[4] The rule, which has been approved by the Commission on a pilot basis through August 3, 1996,[5] prohibits member firms from effecting short sales at or below the current inside bid as disseminated by the Nasdaq system whenever that bid is lower than the previous inside bid.[6]

In order to ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, the rule provides an exemption to ''qualified'' Nasdaq market makers. Even if a market maker is able to avail itself of the qualified market maker exemption, it can only utilize the exemption from the short sale rule for transactions that are made in connection with *bona fide* market making activity. If a market maker does not satisfy the requirements for a qualified market maker, it can remain a market maker in the Nasdaq system, however, it can not take advantage of the exemption from the rule.

From February 1, 1996 to August 3, 1996, a ''qualified'' Nasdaq market maker is defined to be a market maker that satisfies the criteria for a PMM found in NASD Rule 4612.[7] To qualify as a PMM, market makers must satisfy at least two of the following three criteria: (1) The market maker must be at the best bid or best offer as shown on the Nasdaq system no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; or (3) no more than 50 pernet of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading. If, however, the market maker satisfies only one of the criteria, the market maker may still qualify as a PMM if the market maker executes 1½ times its ''proportionate'' volume in the stock.[8] If a market maker is a PMM, a ''P'' indicator is displayed next to its market maker identification to denote that it is a PMM.[9]

With respect to initial public offerings, the PMM Rule provides that if a member firm has obtained PMM status in 80 percent or more of the stocks in which it has registered (''80 Percent Firm''), the firm may immediately become a PMM in an IPO by registering and entering quotations in the issue.[10] However, if the firm: (1) withdraws from the IPO on an unexcused basis any time during the calendar month in which the IPO commenced trading on Nasdaq or (2) fails to meet the PMM standards for the month in which the IPO commenced trading on Nasdaq, then the entire firm is precluded from becoming a PMM in any other IPO for ten business days following unexcused withdrawal or failure to meet the PMM standards (''10-day penalty rule'').[11]

The purpose of the instant rule filing is to amend the PMM Rule to implement and codify two recent NASD interpretations concerning the operation of the PMM Rule in IPO situations. The first amendment reflects that a newly-listed Nasdaq issue ceases to be an IPO once it has traded on Nasdaq for five business days. Thus, if an ''80 Percent Firm'' registered in a stock on the sixth business day after the issue was first listed on Nasdaq and thereafter withdrew from the stock on an unexcused basis during the calendar month in which the issue commenced trading on Nasdaq, the firm would not be subject to the ''10-day penalty

[3] The term ''short sale'' refers to a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a ''short sale'' contained in SEC Rule 3b–3, which rule is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[4] *See* Securities Exchange Act Release No. 34277 (Jun. 29, 1994), 59 FR 34885 (July 7, 1994) (order approving File No. SR–NASD–92–12).

[5] *See* Securities Exchange Act Release No. 36532 (Nov. 30, 1995), 60 FR 62519 (Dec. 6, 1995) (order approving File No. SR–NASD–95–58).

[6] Nasdaq calculates the inside bid and the best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an ''up bid'' or a ''down bid.'' Specifically, an ''up bid'' is denoted by a green ''up'' arrow symbol and a ''down bid'' is denoted by a red ''down'' arrow symbol. Accordingly, absent an exemption from the rule, a member can not effect a short sale at or below the inside bid in a security in its proprietary account or an account of a customer if there is a red arrow next to the security's symbol on the screen. In order to effect a ''legal'' short sale on a down bid, the short sale must be executed at a price at least a 1/16 of a point above the current inside bid. Conversely, if the security's symbol has a green up arrow next to it, members can effect short sales in the security without any restrictions. The rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Standard Time).

[7] Before the PMM standards went into effect, a ''qualified market maker'' was defined to be a market maker that had entered quotations in the relevant security on an uninterrupted basis for the preceding 20 business days, the so-called ''20-day test.''

[8] For example, if there are 10 market makers in a stock, each dealer's proportionate share volume would be 10 percent; therefore, 1½ times proportionate share volume would mean 15 percent of overall volume.

[9] The review period for satisfaction of the PMM performance standards is one calendar month. If a PMM has not satisfied the threshold standards after a particular review period, the PMM designation will be removed commencing on the next business day following notice of failure to comply with the standards. Market makers may requalify for designation as a Primary Market Maker by satisfying the threshold standards for the next review period.

[10] The PMM rule also has provisions applicable to secondary offerings and merger and acquisition situations. See subparagraphs (g)(2)(A) and (g)(3) of NASD Rule 4612.

[11] If a market maker were to register in an IPO as a non-PMM despite the fact that its firm met the 80 Percent Test, then the ten-day penalty rule would not be activated if the market maker were to withdraw from the IPO on an unexcused basis or fail to meet the PMM standards for the issue. Since Nasdaq automatically appends a PMM designation to an ''80 Percent Firm'' when it registers in an IPO, it is incumbent upon the firm to notify Nasdaq Market Operations when it wishes to trade as a non-PMM in an IPO before it begins quoting the issue.

rule.'' [12] The second amendment provides that the applicable first PMM review period for IPOs that come to market during the last five business days of a month is the calendar month after the month in which the IPO commenced trading on Nasdaq. Thus, if an IPO comes to market on the last day of a month, the applicable PMM review period would be the next full calendar month, not the single day on which the issue was first listed on Nasdaq. The NASD believes this amendment is appropriate because it avoids situations where NASD members may be potentially subject to the ''ten-day penalty rule'' based on just a few days of trading activity.

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act.[13] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, 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. Specifically, the NASD believes the proposed rule change will help to ensure the fair and efficient operation and administration of the PMM Rule. The NASD also believes the proposed rule change will help to ensure that NASD members understand the operation of the PMM Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and subparagraph (e) of Rule 19b–4 thereunder.[15]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the National Association of Securities Dealers, Inc. All submissions should refer to File No. SR–NASD–96–25 and should be submitted by August 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18171 Filed 7–17–96; 8:45 am]

BILLING CODE 8010–01–M

[12] The market maker, however, would be subject to the 20 day penalty rule. See NASD Rule 4730.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] 17 CFR 200.30–3(a)(12).

[Release No. 34–37428; File No. SR–NYSE–94–34]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 3 to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendment of Exchange Rule 92

July 11, 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 June 28, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to 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 proposed rule change consists of further amendments to Rule 92 which would allow member organizations to trade along with customers when liquidating a block position or engaging in arbitrage, subject to certain conditions, and which would limit the circumstances under which Rule 92 would apply to trades by a member or member organization off the Exchange.

The following is the text of the proposed rule change marked to reflect all of the proposed changes to the current rule.[1] Additions to the current rule are in italics and deletions are in brackets.

Rule 92: Limitations on Members' Trading Because of Customers' Orders

[(a) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, his member organization or any other member, allied member or approved person, in such organization or officer thereof, is directly or indirectly interested, while such member personally holds or has knowledge that his member organization holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or

[1] The text of the proposed rule change published below incorporates all of the changes to the original rule proposal made in Amendment Nos. 1, 2, and 3. *See* Securities Exchange Act Release Nos. 35139 (Dec. 22, 1994), 60 FR 156 (Jan. 3, 1995) (notice of filing of proposed rule change, including Amendment No. 1); 36015 (July 21, 1995), 60 FR 38875 (July 28, 1995) (notice of filing of Amendment No. 2).

initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his member organization holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to sell such security in the unit of trading for a customer.]

(a) Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) any Exchange-listed security on the Exchange or any other market center for any account in which such member or member organization or any approved person thereof is directly or indirectly interested (a ''proprietary order''), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.

(b) A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including an understanding of the relative price and size of allocated execution reports, under the following conditions:

(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer's order is for 10,000 shares or more; or

(2) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transactions, and recording such transactions in an account used solely to record arbitrage transactions (an ''arbitrage account'').

(c) The provisions of this Rule shall not apply *to*:

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders for customers; [or]

(2) [to] any purchase or sale of any security upon terms for delivery other than those specified in such unexecuted market or limited price order[.];

(3) transactions by a member or member organization acting in the capacity of a market maker pursuant to Securities and Exchange Commission Rule 19c–3 in a security listed on the Exchange; and

(4) transactions by a member or member organization acting in the capacity of a specialist or market maker on another national securities exchange.

Supplementary Material

.10 A member or employee of a member or member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

.20 This Rule shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.

.30 For purposes of paragraph (b) above, the term ''account of an individual investor'' shall have the same meaning as the meaning ascribed to that term in Exchange Rule 80A. For purposes of paragraph (b)(1) above, the term ''proprietary facilitation account'' shall mean an account in which a member organization has a direct interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(2) above, the terms ''bona fide arbitrage'' and ''risk arbitrage'' shall have the meaning ascribed to such terms in Securities Exchange Act Release 15533, January 26, 1979. All transactions effected pursuant to paragraph (b)(2) above must be recorded in an arbitrage account.

[.10] *.40* A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule.

[.20] *.50* See paragraph (c)(i) of Rule 800 (Basket Trading: Applicability and Definitions) and paragraph 99 (Off-Hours Trading: Applicability and Definitions) in respect of the ability to initiate basket transactions and transactions through the ''Off-Hours Trading Facility'' (as Rule 900 defines that term), respectively, notwithstanding the limitations of this Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the 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

The purpose of the proposed rule change is to make certain technical amendments to the changes originally proposed in SR–NYSE–94–34. The Exchange's original proposal exempted from Rule 92 transactions by a member organization acting in the capacity of a market maker pursuant to Regulation 240.19c–3 of the Securities and Exchange Commission, and transactions by a regional exchange specialist or market maker, to the extent that a riskless principal trade is effected and immediately liquidated at the same price to a customer on that exchange. The Exchange is amending this portion of Rule 92 (paragraph (c)(4) to provide that regional exchange specialists and market makers will be exempt from the provisions of the rule in the same manner as 19c–3 market makers, when they are acting in the capacity of a specialist or market maker on that exchange. The Exchange is making this amendment so as not to interfere with the established market making practices of other market centers.

Rule 92 is an investor protection and market integrity rule, and as member organizations (other than specialists, competitive traders, and registered competitive market makers) make their proprietary trading decisions off the Floor of the Exchange, the scope of Rule 92 would be expanded from a narrow focus on trading Floor activities to now

encompass member organizations' transactions in NYSE-listed securities irrespective of the market center in which those transactions occur. To the extent that another self-regulatory organization (''SRO'') has a similar prohibition and the prohibited activity results in transactions effected solely in that other SRO's market and that SRO is a member of the Intermarket Surveillance Group, (''ISG''), the ISG's investigative procedures would apply.

The Exchange believes that amending Rule 92 in this regard is consistent with the Exchange's expectations that its members and member organizations, in the exercise of their fiduciary duty and pursuant to principles of agency law, place the interests of their customers ahead of their own proprietary interests, regardless of where they choose to pursue those proprietary interests.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change will enable member organizations to add depth and liquidity to the Exchange's market, while continuing to provide customer protection through the requirement of customer approval for trading along situations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, particularly since the rule would apply equally in all market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange understands that the Commission has received comments on SR–NYSE–94–34 Amendment No. 2 thereto from at least one self-regulatory organization. The Exchange believes that issues raised by this commentator are addressed herein.[2]

[2] All the comment letters received by the Commission regarding the NYSE's proposal are available in the Commission's public reference room in File No. SR–NYSE–94–34.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by August 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18258 Filed 7–17–96; 8:45 am]

BILLING CODE 8010–01–M

COMMISSION ON UNITED STATES-PACIFIC TRADE AND INVESTMENT POLICY

Office of the United States Trade Representative

Notice of Meeting of the Commission on United States Pacific Trade and Investment Policy

AGENCIES: Commission on United States-Pacific Trade and Investment Policy and Office of the United States Trade Representative.

ACTION: Notice that the next meeting of the Commission on United States-Pacific Trade and Investment Policy, originally scheduled for July 18, will now be held on July 17, 1996, from 9:30 a.m. to 5:30 p.m. The meeting will be closed to the public from 9:30 a.m. to 10:45 a.m. and from 3:00 p.m. to 5:30 p.m. The meeting will be open to the public from 10:45 a.m. to 3:00 p.m.

SUMMARY: The Commission on United States-Pacific Trade and Investment Policy will hold a meeting on July 17, 1996, from 9:30 a.m. to 5:30 p.m. The meeting will be closed to the public from 9:30 a.m. to 10:45 a.m. and from 3:00 p.m. to 5:30 p.m. The meeting will include a review and discussion of current issues affecting U.S. trade policy with Asia. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, the USTR has determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 10:45 a.m. to 3:00 p.m. At this time the Commission will continue the study phase of its work and consider: (1) Challenges and opportunities in the Asia-Pacific region for the U.S. automotive industries; (2) workers rights issues; and (3) opportunities and challenges for U.S. investment in the Asia-Pacific region. Public attendance during the meeting is for observation only. Individuals who are not members of the Commission will not be invited to comment.

DATES: The meeting is scheduled for July 17, 1996, unless otherwise notified.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce 14th & Constitution Avenue, NW.,

Washington, DC 20230 in the Secretary's Conference Room, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, Executive Director of the Commission on United States-Pacific Trade and Investment Policy, Room 400, 600 17th Street, NW., Washington, DC 20508, (202) 395–9679.

Nancy Adams,

Executive Director, Commissioner on United States-Pacific Trade and Investment Policy.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–18163 Filed 7–17–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders. Also, the publication of these indexes and digests should assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW, Suite 925, Washington, DC 20004: telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available for published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the Federal Register (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter in index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decision and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 2990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	Federal Register publication
10/1/90–12/31/90	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91	57 FR 2299; 1/21/92
1/1/92–3/31/92	57 FR 12359; 4/9/92
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94*	60 FR 4454; 1/23/95*.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95	61 FR 1972; 1/24/96.
1/1/96–3/31/96	61 FR 16955; 4/18/96.

*Due to administrative oversight, the index for the third quarter of 1994, including information pertaining to the decisions and orders issued by the Administrator between July 1 and September 30, 1994, was not published on time. The information regarding the third quarter's decisions and orders, as well as the fourth quarter's decisions and orders in 1994, were included in the index published on January 23, 1995.

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Also, the Administrator's decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

Civil Penalty Actions—Orders Issued by the Administrator

Order Number Index

(This index includes all decisions and orders issued by the Administrator from April 1, 1996, to June 30, 1996.)

96–13	Kennelm H. Winslow.
4/19/96	CP94SO0153.
96–14	Midtown Neon Sign Corp.
4/19/96	CP94EA0057.
96–15	Valley Air Services, Inc.
5/3/96	CP94NE0095/94EAJANE0017.
96–16	WestAir Commuter Airlines, Inc.
5/3/96	CP94WP0019.
96–17	Ramon C. Fenner.
5/3/96	CP93SO0414.
96–18	Thomas Kilrain.
5/3/96	CP94NE0268.
96–19	[Air Carrier].
6/4/96	CP94**0140.

Civil Penalty Actions—Orders Issued by the Administrator

Subject Matter Index

(Current as of June 30, 1996)

REGULATIONS (Title 14 CFR, unless otherwise noted)

13.209	90–3 Metz; 90–15 Playter; 91–18 [Airport Operator]; 92–32 Barnhill; 92–47 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 94–8 Nunez; 94–5 Grant; 94–22 Harkins; 94–29 Sutton; 94–30 Columna; 95–10 Diamond; 95–28 Valley Air.
13.210	92–19 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 93–7 Dunn; 93–28 Strohl; 94–5 Grant; 94–30 Columna; 95–28 Valley Air; 96–17 Fenner.
13.211	89–6 American Airlines; 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart; 91–24 Esau; 92–1 Costello; 92–9 Griffin; 92–18 Bargen; 92–19 Cornwall; 92–57 Detroit Metro. Wayne County Airport; 92–74 Wendt; 92–76 Safety Equipment; 93–2 Wendt; 94–5 Grant; 94–18 Luxemburg; 94–29 Sutton; 95–12 Toyota; 95–28 Valley Air.
13.212	90–11 Thunderbird Accessories; 91–2 Continental Airlines.
13.213	
13.214	91–3 Lewis.
13.215	93–28 Strohl; 94–39 Kirola.
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13.217	91–17 KDS Aviation.
13.218	89–6 American Airlines; 90–11 Thunderbird Accessories; 90–39 Hart; 92–9 Griffin; 92–73 Wyatt; 93–19 Pacific Sky Supply; 94–6 Strohl; 94–27 Larsen; 94–37 Houston; 95–18 Rayner; 96–16 WestAir.
13.219	89–6 American Airlines; 91–2 Continental Airlines; 91–54 Alaska Airlines; 93–37 Airspect; 94–32 Detroit Metro. Wayne Airport.
13.220	89–6 Americans Airlines; 90–20 Carroll; 91–8 Watts Agricultural Aviation; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter.
13.221	92–29 Haggland; 92–31 Eaddy; 92–52 Cullop.
13.222	92–72 Giuffrida; 96–15 Valley Air.
13.223	91–12 & 91–31 Tarry & Menne; 92–72 Giuffrida; 95–26 Hereth; 96–15 Valley Air.
13.224	90–26 Waddell; 91–4 [Airport Operator]; 92–72 Giuffrida; 94–18 Luxemburg; 94–28 Toyota; 95–25 Conquest; 96–17 Fenner.
13.225	
13.226	
13.227	90–21 Carroll; 95–26 Hereth.
13.228	92–3 Park.
13.229	
13.230	92–19 Carnwall; 95–26 Hereth.
13.231	92–3 Park.
13.232	89–5 Schultz; 90–20 Degenhardt; 92–1 Costello; 92–18 Bargen; 92–32 Barnhill; 93–28 Strohl; 94–28 Toyota; 95–12 Toyota; 95–16 Mulhall; 96–6 Ignatov.
13.233	89–1 Gressani; 89–4 Metz; 89–5 Schultz; 89–7 Zenkner; 89–8 Thunderbird Accessories; 90–3 Metz; 90–11 Thunderbird Accessories; 90–19 Continental Airlines; 90–20 Degenhardt; 90–25 & 90–27 Gabbert; 90–35 P. Adams; 90–19 Continental Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–7 Pardue; 91–8 Watts Agricultural Aviation; 91–10 Graham; 91–11 Continental Airlines; 91–12 Bargen; 91–24 Esau; 91–26 Britt Airways; 91–31 Terry & Menne; 91–32 Bargen; 91–43 & 91–44 Delta; 91–45 Park; 91–46 Delta; 91–47 Delta; 91–48 Wendt; 91–52 KDS Aviation; 91–53 Koller; 92–1 Costello; 92–3 Park; 92–7 West; 92–11 Alilin; 92–15 Dillman; 92–16 Wendt; 92–18 Bargen; 92–19 Cornwall; 92–27 Wendt; 92–32 Barnhill; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines; 92–39 Beck; 92–45 O'Brien; 92–52 Beck; 92–56 Montauk Caribbean Airways; 92–57 Detroit Metro. Wayne Co. Airport; 92–67 USAir; 92–69 McCabe; 92–72 Giuffrida; 92–74 Wendt; 92–78 TWA; 93–5 Wendt; 93–6 Westair Commuter; 93–7 Dunn; 93–8 Nunez; 93–19 Pacific Sky Supply; 93–23 Allen; 93–27 Simmons; 93–28 Strohl; 93–31 Allen; 93–32 Nunez; 94–9 B&G Instruments; 94–10 Boyle; 94–12 Bartusiak; 94–15 Columna; 94–18 Luxemburg; 94–23 Perez; 94–24 Page; 94–26 French Aircraft; 94–28 Toyota; 95–2 Meronek; 95–9 Woodhouse; 95–13 Kilrain; 95–23 Atlantic World Airways; 95–25 Conquest; 95–26 Hereth; 96–1 [Airport Operator]; 96–2 Skydiving Center.
13.234	90–19 Continental Airlines; 90–31 Carroll; 90–32 & 90–38 Continental Airlines; 91–4 [Airport Operator]; 95–12 Toyota; 96–9 [Airport Operator].
13.235	90–11 Thunderbird Accessories; 90–12 Continental Airlines; 90–15 Playter; 90–17 Wilson; 92–7 West.
Part 14	92–74 & 93–2 Wendt; 95–18 Pacific Sky Supply.
14.01	91–17 & 92–71 KDS Aviation.
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14.05	90–17 Wilson.
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43.15	90–25 & 90–27 Gabbert; 91–8 Watts Agricultural Aviation; 94–2 Woodhouse; 96–18 Kilrain.
65.15	92–73 Wyatt.
65.92	92–73 Wyatt.
91.8 (91.11 as of 8/18/90)	92–3 Park.
91.9 (91.13 as of 8/18/90)	90–15 Playter; 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–48 USAir; 92–49 Richardson & Shimp; 92–47 Cornwall; 92–70 USAir; 93–9 Wendt; 93–17 Metcalf; 93–18 Westair Commuter; 93–29 Sweeney; 94–29 Sutton; 95–26 Hereth; 96–17 Fenner.
91.11	96–6 Ignatov.
91.29 (91.7 as of 8/18/90)	91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 92–4 Northwest Aircraft Rental.
91.65 (91.111 as of 8/18/90)	91–29 Sweeney; 94–21 Sweeney.
91.67 (91.113 as of 8/18/90)	91–29 Sweeney.
91.75 (91.123 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–49 Richardson & Shimp; 93–9 Wendt.
91.79 (91.119 as of 8/18/90)	90–15 Playter; 92–47 Cornwall; 93–17 Metcalf.
91.87 (91.129 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins.
91.103	95–26 Hereth.
91.111	96–17 Fenner.
91.113	96–17 Fenner.
91.151	95–26 Hereth.
91.173 (91.147 as of 8/18/90)	91–8 Watts Agricultural Aviation.
91.703	94–29 Sutton.
107.1	90–19 Continental Airlines; 90–20 Degenhardt; 91–4 [Airport Operator]; 91–58 [Airport Operator].
107.13	90–12 & 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator].
107.20	90–24 Bayer; 92–58 Hoedl.
107.21	89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant; 94–31 Smalling.
107.25	94–30 Columna.
108.5	90–12, 90–18, 90–19, 91–2 & 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 & 94–1 Delta Air Lines; 94–44 American Airlines; 96–16 WestAir; 96–19 [Air Carrier].
108.7	90–18 & 90–19 Continental Airlines.
108.10	96–16 WestAir.
108.11	90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 92–46 Sutton-Sautter; 94–44 American Airlines.
108.13	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines.
121.133	90–18 Continental Airlines.
121.153	92–48 & 92–70 USAir; 95–11 Horizon; 96–3 America West Airlines.
121.317	92–37 Giuffrida; 94–18 Luxemburg.
121.318	92–37 Giuffrida.
121.367	90–12 Continental Airlines.
121.571	92–37 Giuffrida.
121.628	95–11 Horizon.
135.1	95–8 Charter Airlines; 95–25 Conquest.
135.5	94–3 Valley Air; 94–20 Conquest Helicopters; 95–25 Conquest; 95–27 Valley Air; 96–15 Valley Air.
135.25	92–10 Flight Unlimited; 94–3 Valley Air; 95–27 Valley Air; 96–15 Valley Air.
135.63	94–40 Polynesian Airways; 95–17 Larry's Flying Service; 95–28 Atlantic; 96–4 South Aero.
135.87	90–21 Carroll.
135.95	95–17 Larry's Flying Service.

135.185	94–40 Polynesian Airways.
135.263	95–9 Charter Airlines; 96–4 South Aero.
135.267	95–8 Charter Airlines; 95–17 Larry's Flying Service; 96–4 South Aero.
135.293	95–17 Larry's Flying Service; 96–4 South Aero.
135.343	95–17 Larry's Flying Service.
135–413	94–3 Valley Air; 96–15 Valley Air.
135.421	93–36 Valley Air; 94–3 Valley Air; 96–15 Valley Air.
135.437	94–3 Valley Air; 96–15 Valley Air.
145.53	90–11 Thunderbird Accessories.
145.57	94–2 Woodhouse.
145.61	90–11 Thunderbird Accessories.
191	90–12 & 90–19 Continental Airlines, 90–37 Northwest Airlines.
298.1	92–10 Flight Unlimited.
302.8	90–22 USAir.
49 CFR:	
1.47	92–76 Safety Equipment.
171 et seq.	95–10 Diamond.
171.2	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall.
171.8	92–77 TCI.
172.101	92–77 TCI; 94–28 Toyota; 94–31 Smalling.
172.200	92–77 TCI; 94–28 Toyota; 95–16 Mulhall.
172.202	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall.
172.203	94–28 Toyota.
172.204	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall.
172.300	94–31 Smalling; 95–16 Mulhall.
172.301	94–31 Smalling; 95–16 Mulhall.
172.304	92–77 TCI; 94–31 Smalling; 95–16 Mulhall.
172.400	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall.
172.402	94–28 Toyota.
172.406	92–77 TCI.
173.1	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall.
173.3	94–28 Toyota; 94–31 Smalling.
173.6	94–28 Toyota.
173.22(a)	94–28 Toyota; 94–31 Smalling.
173.24	94–28 Toyota; 95–16 Mulhall.
173.25	94–28 Toyota.
173.27	92–77 TCI.
173.115	92–77 TCI.
173.240	92–77 TCI.
173.243	94–28 Toyota.
173.260	94–28 Toyota; 94–31 Smalling.
175.25	94–31 Smalling.
821.30	92–73 Wyatt.
821.33	90–21 Carroll.

STATUTES

5 U.S.C.:	
504	90–17 Wilson; 91–17 & 92–71 KDS Aviation; 92–74, 93–2 & 93–9 Wendt; 93–29 Sweeney; 94–17 TCI; 95–27 Valley Air.
552	90–12, 90–18 & 90–19 Continental Airlines; 93–10 Costello.
554	90–18 Continental Airlines; 90–21 Carroll; 95–12 Toyota.
556	90–21 Carroll; 91–54 Alaska Airlines.
557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines; 94–28 Toyota.
705	95–14 Charter Airlines.
5332	95–27 Valley Air.
11 U.S.C.:	
362	91–2 Continental Airlines.
28 U.S.C.:	
2412	93–10 Costello.
2462	90–21 Carroll.
49 U.S.C.:	
5123	95–16 Mulhall.
40102	96–17 Fenner.
44701	96–6 Ignatov; 96–17 Fenner.
44704	96–3 America West Airlines; 96–15 Valley Air.
49 U.S.C. App.:	
1301(31) (operate)	93–18 Westair Commuter.
(32) (person)	93–18 Westair Commuter.
1356	90–18 & 90–19, 91–2 Continental Airlines.
1357	90–18, 90–19 & 91–12 Continental Airlines; 91–41 [Airport Operator]; 91–58 [Airport Operator].
1421	92–10 Flight Unlimited; 92–48 USAir; 92–70 USAir; 93–9 Wendt.
1429	92–73 Wyatt.

1471	89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12, 90–18 & 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt; 92–76 Safety Equipment; 94–20 Conquest Helicopters; 94–40 Polynesian Airways; 96–6 Ignatov.
1472	96–6 Ignatov.
1475	90–20 Degenhardt; 90–12 Continental Airlines; 90–18, 90–19 & 91–1 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 94–40 Polynesian Airways.
1486	90–21 Carroll.
1809	92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota.

Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of June 30, 1996)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of each decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1996, to June 30, 1996. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Kenelm H. Winslow

Order No. 96–13 (4/19/96)

Appeal dismissed. Respondent Winslow failed to file an appeal brief. Consequently, Winslow's appeal is dismissed for failure to perfect.

In the Matter of Midtown Neon Sign Corporation

Order No, 96–14 (4/19/96)

Cross-appeal dismissed. Respondent Midtown Neon Sign Corp. has failed to show good cause for the untimeliness of its notice of appeal. As a result, Midtown's cross-appeal is dismissed.

In the Matter of Valley Air Services, Inc.

Order No. 96–15 (5/3/96)

Petition for Reconsideration Denied. The agency attorney filed a petition for reconsideration of FAA Order No. 95–27 (December 19, 1995), which affirmed the law judge's award to Valley Air of attorney fees and other expenses under the Equal Access to Justice Act. In the petition, the agency argued that Order No. 95–27 improperly equated the FAA's failure to prevail with a lack of substantial justification. The FAA is correct in stating that an agency may have been substantially justified even if it lost its case. However, Order No. 95–27 does not stand for the proposition that because the FAA lost on the merits, it must pay Valley Air's attorney fees. Rather, Order No. 95–27 found that not only had the FAA lost, but that it had also failed to provide even enough evidence to show that its positions were substantially justified. The petition for reconsideration is denied.

In the Matter of WestAir Commuter Airlines, Inc.

Order No. 96–16 (5/3/96)

Failure to Provide Ground Security Coordinator. WestAir has appealed from the law judge's decision assessing a $6,500 civil penalty for WestAir's failure to provide a ground security coordinator for three WestAir flights. WestAir had entered into an agreement with United whereby United would provide complete station support, including a ground security coordinator, for each of WestAir's United Express flights leaving from John Wayne Airport. WestAir argued, as an affirmative defense, that it had no knowledge of United's failure to provide a ground security coordinator.

WestAir remains responsible for the security violations at issue. The record shows no attempt on WestAir's part to monitor whether United was keeping its agreement to provide trained ground security coordinators for WestAir's flights. An air carrier's responsibilities are too critical to permit it to transfer its obligations to another. Although WestAir argues that United has its own, more rigorous security program, this makes little difference if United's security program applies only to United flights and not to WestAir flights. Moreover, it appears that WestAir and United are partners. One characteristic of partnerships is joint and several liability.

Sanction. The $6,500 civil penalty assessed by the law judge is affirmed. It highlights the serious nature of an air carrier's failure to ensure that the safeguards in its security program are in place.

In the Matter of Ramon C. Fenner

Order No. 96–17 (5/3/96)

Aircraft Owner Responsible for Pilot's Safety Violations. The pilot of a Cessna 182 owned by Mr. Fenner caused two near mid-air collisions. Mr. Fenner and his wife refused to disclose to FAA investigators the identity of the pilot of Mr. Fenner's airplane. A preponderance of the evidence indicated that the pilot had permission to fly the airplane.

The definition of ''operate'' in the Federal Aviation Act, as amended, specifically includes authorizing use of aircraft. Thus, Mr. Fenner ''operated'' the aircraft within the meaning of the Act because he authorized the pilot to operate the aircraft. The law judge's assessment of a $4,000 civil penalty is affirmed.

In the Matter of Thomas Kilrain

Order No. 96–18 (5/3/96)

Violations of 14 CFR §§ 43.5(a) and 43.15(a) Affirmed. The Administrator rejected Mr. Kilrain's interpretation of AD 89–18–08. The Administrator held that the subject Airworthiness Directive, as it incorporated Service Bulletin No. 176, required that the fuel tanks, fuel system, and electric fuel pump filter be inspected for fuel tank contamination, and that the fuel tank access covers be resealed using a high-octane fuel resistant sealant. The Administrator rejected Mr. Kilrain's interpretation that the tank access covers did not have to be resealed unless fuel tank contamination was found. Because neither Mr. Kilrain nor the repair facility which had previously worked on this aircraft had conducted a complete inspection and then resealed the tanks in accordance with the Airworthiness Directive, Mr. Kilrain violated 14 CFR § 43.5(a) and 43.15(a) when he returned the aircraft to service after an annual inspection.

In the Matter of [Air Carrier]

Order No. 96–19 (6/4/96)

Failure to Detect Test Object during Screening—Sanction. During a screening system operator test, the air carrier's contract employee screener failed to detect a test object in a handbag of an FAA employee which had been submitted for x-ray screening. The screener was looking at and talking to an associate throughout the test. The law judge held that the air carrier had violated 14 C.F.R. § 108.5(a)(1). The law judge applied a superseded FAA sanction policy and assessed a $1000 civil penalty.

The Administrator held that the law judge was subject to agency policy. Therefore, the law judge should have followed the new—and current—agency sanction policy regarding civil penalty ranging from $7500 to $10,000 is appropriate when egregious circumstances, including serious neglect of duties by a screener (such as deliberate or gross lack of attention to assigned tasks) are present.

The Administrator held that in this case, egregious circumstances were present. The test failure was a direct result of the inexcusable inattentiveness of the screener

when there was light traffic at the checkpoint and when the screener and when the screener had only been at her station for 10 minutes. At the same time, the aggravating factors present did not warrant the imposition of the $10,000 maximum civil penalty. It was held that $7,500 was an appropriate penalty based upon the totality of the circumstances, including the air carrier's success rate at detecting test objects at that checkpoint before this incident as well as the screener's serious neglect of duties.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

AvLex, published by Aviation Daily, 1156 15th Street, NW, Washington, DC 20005, (202) 822–4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1577;

Federal Aviation Decisions, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546–1490.

2. *Disks/CD–ROM.* the decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040 (806) 733–2483, is placing the decisions on CD–ROM.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available on Compuserve, FedWorld, and Westlaw. The Database ID for Westlaw is FTRAN–FAA.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decisions has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject matter index and digests.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Assistant Chief Counsel for the Alaskan Regional (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AK 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100.

Issued in Washington, DC on July 10, 1996.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 96–18279 Filed 7–17–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Finding of No Significant Impact

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Federal Aviation Administration (FAA) has made a finding of no significant impact (FONSI) with respect to the potential programmatic environmental impacts related to the construction and operation of its proposed Wide Area Augmentation System (WAAS).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Burmester, Federal Aviation Administration, (202) 358–5408.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Federal Aviation Administration (FAA) is proposing to construct and operate an enhanced aircraft navigation system consisting of a nationwide system of hardware and software and four transmitting antenna sites known as ground earth stations (GESs). The collective system is known as the Wide Area Augmentation System (WAAS). The WAAS would augment existing Department of Defense (DoD)-provided Global Positioning System (GPS) navigational information for civil aviation use. The WAAS would receive, process, and correct data from existing GPS satellites and transmit navigation corrections to existing communications satellites. The communications satellites would transmit enhanced GPS information to aircraft that would be equipped with WAAS receivers to use this information for navigation. This satellite-based system would be used to supplement the existing navigation system, providing better navigational information to aircraft and thus enhancing safety.

In order to implement WAAS, the FAA would use existing GPS satellites and geostationary earth orbiting (GEO) communication satellites, construct wide area reference stations (WRSs) and wide area master stations (WMSs), and lease GES transmitting antenna facilities to provide additional accuracy, availability, and integrity of information provided by the existing civilian available GPS. The 29 WRSs and WMSs to be constructed would each consist of three 32 inch diameter receiving antennas on 6 foot supports with attached weather sensors. These antennas would be mounted on existing FAA facilities and connected by cable to additional interior equipment. The four

GES facilities to be leased would consist of a transmitter control building and one to three 54 foot (16.4 meter) diameter parabolic antenna dishes.

Purpose

One of the FAA's long-term goals is to provide accurate, available, and reliable navigational data to enhance airspace safety in a cost-effective manner. In order to meet this goal, the FAA proposes to implement the initial WAAS which would provide 100% availability of navigational information throughout the national airspace, avoid ground-based reflection and signal interference problems, provide accurate position information, and support an unlimited number of users. By augmenting the existing navigation system to provide accurate aircraft position information to an unlimited number of pilots throughout national airspace, the initial WAAS would provide a safer, more efficient navigation system in accordance with the FAA's mission. The initial WAAS program would be a supplemental navigation system, only; the initial WAAS is expected to neither increase air traffic nor alter existing air routes.

Environmental Impacts

No significant environmental impacts were identified at the programmatic level. No significant programmatic impacts to the physical setting, including electromagnetic fields and air and water quality; land use/land management; biological resources; cultural/historical resources; or socioeconomics were identified. Any potential environmental effects that might occur due to activities associated with the proposed initial WAAS have been determined to be associated with activities at specific sites. These potential environmental effects and mitigation alternatives will be addressed in the site-specific environmental analyses to be prepared for the individual actions to implement this program. If site-specific environmental analyses indicate potentially significant environmental impacts at the preferred individual sites, FAA would take steps to mitigate potential significant effects or change the specific sites to avoid such impacts. This FONSI for the Programmatic EA does not preclude the relocation of the specific sites if an environmental analysis shows the potential for significant impact.

The proposed initial WAAS will use existing FAA facilities and lease GES services from existing sites and is consistent with community planning at the programatic level.

Alternatives

The FAA completed an analysis of various alternative navigation concepts with the potential to meet the FAA's long-term navigation goals. Alternatives other than the initial WAAS that were considered were the enhancement of the existing navigation system (very high frequency omnidirectional ranges, distance measuring equipment, and instrument landing systems); use of existing long-range, local-area differential GPS; and receiver autonomous integrity monitoring. None of these alternatives met the technical needs of the FAA. The ''no action'' alternative, the continued operation of the existing system without providing a supplemental navigation system, was also considered. It was found to have no significant environmental impacts. However, it does not meet the FAA's long-term goals of increased navigational accuracy, availability, and system integrity.

Conclusion

After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(c) of NEPA.

Approved: Raymond J. Swider, Jr.

Date: July 12, 1996.

Order

The foregoing actions are directed to be taken, and determinations and approvals are made, under the authority of Title 49 U.S.C. 44502(a)(1) (formerly Section 307 of the Federal Aviation Act of 1958) to acquire, establish, improve, operate, and maintain air navigation facilities.

Right of Appeal

This order constitutes final agency action under 49 U.S.C. 46110, for construction and operation of the initial WAAS. Any party to this proceeding having a substantial interest may appeal the order to the Courts of Appeals of the United States or the District of Columbia upon petition, filed within 60 days after issuance of this order.

Issued in Washington, DC on July 10, 1996.

Raymond J. Swider, Jr.,

WAAS Project Manager, Satellite Program Office, AND–510, FAA Headquarters.

[FR Doc. 96–18205 Filed 7–17–96; 8:45 am]

BILLING CODE 4910–01–P

RTCA, Inc., Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee (SC) 147 meeting to be held August 6–7, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review of Meeting Agenda; (3) Review and Approval of Minutes of the Previous Meeting; (4) Report of Working Group Activities: a. Operations Working Group/Enhancements Working Group; b. Requirements Working Group; (5) Report on SC–186 Activities; (6) Report on FAA TCAS Program Activities: a. TCAS I; b. TCAS II; c. TCAS IV; d. ATC Applications Activities; (7) Review and Update of Verification and Validation Process; (8) Review Schedule and Milestone Status for Version 7; (9) Review of Action Items From Last Meeting: a. Letter to TMC Concerning Mode S Crosslink; b. FAA Response to Inquiry about Certification Requirements for Proposed DO–185A Version 7-based TCAS; c. Review Revised TOR for OWG; (10) Other Business; (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on July 12, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–18278 Filed 7–17–96; 8:45 am]

BILLING CODE 4810–13–M

Surface Transportation Board [1]

[STB Finance Docket No. 32987]

R.J. Corman Railroad Company/ Allentown Lines, Inc.; Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation

R.J. Corman Railroad Company/ Allentown Lines, Inc. (RJCN), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 6.73 miles of rail line in the vicinity of Allentown, PA, (the Allentown Cluster), which is owned by Consolidated Rail Corporation as follows: (i) the Lehighton Industrial Track between East Penn Junction approximately milepost 92.835 and Fullerton approximately milepost 96.709); (ii) the Barber's Quarry Industrial Track from approximately milepost 93.144 to milepost 95.089; and (iii) the Allentown Industrial Track from approximately milepost 0.0 to milepost 0.908.

The transaction was expected to be consummated on or after July 8, 1996.

This transaction is related to STB Finance Docket No. 32988, *Richard J. Corman—Continuance in Control Exemption—R.J. Corman Railroad Company/Allentown Lines, Inc.,* wherein Richard J. Corman has concurrently filed a verified notice to continue in control of RJCN, upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32987, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW., Suite 400, Washington, DC 20036.

Dated: July 11, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18127 Filed 7–17–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32988]

Richard J. Corman—Continuance in Control Exemption; R.J. Corman Railroad Company/Allentown Lines, Inc.

Richard J. Corman (Corman), a noncarrier, has filed a notice of exemption to continue in control of R.J. Corman Railroad Company/Allentown Lines, Inc. (RJCN), upon RJCN's becoming a Class III rail carrier.

The transaction was expected to be consummated on July 8, 1996.

This transaction is related to STB Finance Docket No. 32987, *R.J. Corman Railroad Company/Allentown Lines, Inc.—Acquisition and Operation Exemption—Lines of consolidated Rail Corporation,* wherein RJCN seeks to acquire and operate certain rail lines from Consolidated Rail Corporation.

Corman owns and controls five existing Class III common carriers by rail: R.J. Corman Railroad Company/ Pennsylvania Lines, Inc., operating in Pennsylvania; R.J. Corman Railroad Corporation, operating in Kentucky; R.J. Corman Railroad Company/Memphis Line, operating in Tennessee and Kentucky; R.J. Corman Railroad Company/Western Ohio Line, operating in Ohio; and R.J. Corman Railroad Company/Cleveland Line, operating in Ohio.

Corman states that: (i) The railroads will not connect with each other or any railroads in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32988, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, Suite 400, Washington, DC 20036.

Decided: July 11, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18128 Filed 7–17–96; 8:45 am]

BILLING CODE 4915–00–P

RAILROAD RETIREMENT BOARD

Notification of Item Added to Agenda; Sunshine Acting Meeting

On July 12, 1996, the Board voted unanimously to add one item to its agenda for the July 17, 1996 Board Meeting:

(8) Preparing for fiscal year 1997 funding estimates.

Date: July 15, 1996.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–18341 Filed 7–17–96; 9:57 am]

BILLING CODE 7905–01–M

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–EZ, Short Form Return of Organization Exempt From Income Tax.

DATES: Written comments should be received on or before September 16, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 990–EZ, Short Form Return of Organization Exempt From Income Tax.

OMB Number: 1545–1150

Form Number: 990–EZ

Abstract: An annual return is required by Internal Revenue Code (Code) section 6033 for organizations exempt under Code section 501(a). Form 990–EZ is used by tax-exempt organizations and nonexempt charitable trusts whose gross receipts are less than $100,000 and whose total assets at the end of the year are less than $250,000 to provide the IRS with the information required by Code section 6033. IRS uses the information from Form 990–EZ to ensure that tax-exempt organizations are operating within the limitations of their tax exemption.

Current Actions: The instructions for Form 990 and Form 990–EZ were combined to save on printing and processing costs. These combined instructions include General Instructions applicable to both forms and Specific and line instructions pertaining to each form.

Type of Review: Revision of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 43 hrs. 49 min.

Estimated Total Annual Burden Hours: 4,381,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 9, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–18281 Filed 7–17–96; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 61, No. 139
Thursday, July 18, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5512–9]

National Emission Standards for Hazardous Air Pollutants; Revision of Initial List of Categories of Sources and Schedule for Standards Under Sections 112(c) and (e) of the Clean Air Act Amendments of 1990

Correction

In notice document 96–13824 beginning on page 28197 in the issue of Tuesday, June 4, 1996, make the following corrections:

1. On pages 28203-28208, in Table 1, in the last column, the parenthetical codes ''(C)'', ''(A)'', ''(S)'', ''(P)'' and ''(R)'' should have appeared on the same line as the Federal Register cite preceding it.

2. On page 28204, in the first column, under Agricultural chemicals production, after the second entry insert ''4, 6-Dinitro-o-Cresol Production 11/15/97''; and remove the footnote references after ''Chloroneb Production'' and ''Sodium Pentachlorophenate Production''.

3. On the same page, in the same column, under Food and agriculture processes, in the second entry, ''Casing'' was misspelled.

4. On page 28205, in the first column, in the sixth entry, the footnote references should read ''[d, g]''.

5. On the same page, in the 2d column, in the 15th line from the bottom, ''3080'' should read ''30801''.

6. On page 28206, in the first column, insert a colon after ''Production of organic chemicals'' and ''Miscellaneous processes''.

7. On page 28208, in the footnotes, the second ''(A)'' should read ''(a)''.

BILLING CODE 1505–01–D

Federal Register

Thursday
July 18, 1996

Part II

Department of Agriculture

Office of the Secretary
Farm Service Agency
Commodity Credit Corporation

7 CFR Part 2 et al.
1996 Farm Bill: Implementation of Farm Program Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Farm Service Agency

7 CFR Parts 718, 719, 720, 729, 790, 791, 793, 796

Commodity Credit Corporation

7 CFR Parts 1400, 1401, 1402, 1405, 1412, 1413, 1421, 1425, 1427, 1430, 1434, 1435, 1446, 1468, 1470, 1477, 1478, 1479, 1497, 1498

RIN 0560–AE81

Implementation of the Farm Program Provisions of the 1996 Farm Bill

AGENCIES: Farm Service Agency, Commodity Credit Corporation; USDA.

ACTION: Final rule.

SUMMARY: This final rule implements farm program provisions required by Title I of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The primary issues concern: changes to the dairy, sugar, and peanut programs; the establishment of production flexibility contracts for producers of wheat, feed grains, upland cotton, and rice that specify the terms and conditions for receiving payments from the Commodity Credit Corporation (CCC); statutory payment limitation provisions; implementation of marketing assistance loans, reduced loan repayment rates, and loan deficiency payments; and a cap on Cotton User Marketing Certificate payments.

This action will also: amend Chapter II to delegate authority to implement these programs from the Secretary to the Under Secretary for Farm and Foreign Agricultural Services and to the Administrator, Farm Service Agency (FSA) and to correct an erroneous reference to an existing delegation with respect to the Administrator, Foreign Agricultural Service (FAS); reorganize Chapter VII to consolidate the regulations in a more efficient manner, to free parts for future use and to remove obsolete provisions; and reorganize Chapter XIV so that the regulations of separate agencies that operate through CCC are located and organized in separate and identifiable parts.

This regulation will complete many of the actions being taken by FSA as part of the National Performance Review Initiative to eliminate unnecessary regulations and improve those that remain in force.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: David Winningham, Director, Regulatory Review Group, FSA, USDA, Stop 0572, 1400 Independence Ave. SW, Washington, D.C. 20250–0572, Telephone: (202) 720–5457.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and has been reviewed by the Office of Management and Budget.

Cost-Benefit Assessment

A cost-benefit assessment of the implementation of commodity programs provided under the 1996 Act was completed. Most of the impact on the farm sector is due to Title I provisions (Agricultural Market Transition Act of 1996). However, the cost-benefit assessment also incorporates, but does not separately analyze, the effects of the implementation of Title II (Agricultural Trade) and Title III (Conservation) provisions.

The assessment is based, in part, on analyses of supply, demand, and price conditions and trends in agricultural commodity markets conducted by the U.S. Department of Agriculture (USDA). Several USDA agencies conduct these analyses, which are coordinated through USDA's Interagency Commodity Estimates Committees. The Committees are composed of senior analysts and are responsible for publishing official USDA supply, demand, and price estimates/forecasts. Weather, trade policy, and economic uncertainties surrounding production and use projections can change these forecasts.

The 1996 Act was signed into law on April 4, 1996. The fiscal year (FY) 1997 President's Budget baseline estimates, based on supply and demand conditions as of January 1996 assumed an extension of 1995 program provisions as provided by the Agricultural Act of 1949, as amended (the 1949 Act) prior to enactment of the 1996 Act. The primary amendments to the 1949 Act which are incorporated in this analysis are the provisions of the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act) and related budget reconciliation acts in 1990 and 1993.

The 1996 Act replaces target prices, deficiency payments, and acreage reduction programs with fixed, but declining, payments to producers of contract commodities (wheat, corn, grain sorghum, barley, oats, upland cotton, and rice). Contract payments are based on historical acreage on the farm and will not change if acreage or market prices change. In general, producers with production flexibility contracts are given total flexibility to plant any crop on the farm, except fruits and vegetables. However, participating producers must comply with wetland and conservation requirements under Title XII of the Food Security Act of 1985.

The 1996 Act accelerates the trend of the previous two major farm acts toward greater market orientation, which gradually reduced the Government's influence in the agricultural sector. The reduced role of Government programs may make the sector more vulnerable to supply and/or demand shocks, but the increased planting flexibility and elimination of production adjustment programs allow producers to respond more rapidly. Thus, alternative production and marketing strategies that manage risk could increase in importance.

In aggregate, the national level of acreage planted to most of the major field crops under the 1996 Act is expected to be nearly the same as under the FY 1997 President's Budget baseline assuming continuation of the 1995 program provisions. However, the increased planting flexibility may result in a shift at the farm level and regionally to take advantage of differences in comparative advantage in production of specific crops. Plantings of the eight major field crops are expected to average only about 600,000 acres less compared with the baseline, due largely to the decoupling of payments from planting decisions and the freeing-up of haying and grazing restrictions. The 1996 Act will have little effect on fruits and vegetables because planting limitations are similar to the 1949 Act.

Total outlays for the contract commodities and marketing assistance loan commodities under the 1996 Act are estimated at $36.8 billion, about $23.0 billion higher than under the FY 1997 President's Budget baseline assuming continuation of the 1995 program provisions. This largely reflects higher contract commodity payments compared with projected deficiency payments under the FY 1997 President's Budget baseline.

Net farm income (including crop and livestock sectors) during the 1996–2002 calendar years is expected to be about $15 billion higher under the 1996 Act than under the FY 1997 President's Budget baseline. This largely reflects higher Government payments to farmers under the 1996 Act as production flexibility contract payments exceed

projected deficiency payments. Additionally, changes in the timing of payments to farmers provide an additional boost to farm income in the first year of the program—pushing 1996 net income up about $4 billion. However, net farm income is up by less than the increase in Government payments due to changes in the dairy and peanut programs. Crop sector receipts are down slightly under the 1996 Act due to lower plantings and production of the eight major commodities. Livestock sector receipts are lower due primarily to lower dairy sector receipts. Cash production expenses are up slightly due to increases in net cash rents, which offset lower crop production expenses from lower plantings.

Farmland values are higher under the 1996 Act compared with the FY 1997 President's Budget, reflecting the capitalized value of higher income. Land values average about 3 percent higher under the 1996 Act compared with FY 1997 President's Budget estimates.

Consumer costs are expected to be only slightly lower under the 1996 Act. Because grain prices, on average, are expected to be essentially unaffected, no appreciable change in grain-based food product costs, such as cereal and meat products, is expected.

The livestock sector, excluding dairy, is expected to benefit modestly from the 1996 Act because there are no restrictions on acreage that may be hayed or grazed, and, on average, feed prices are expected to be about unchanged. However, in aggregate, the net impact on nondairy livestock prices and production is negligible. Alternatively, the 1996 Act can be compared to a ''no program'' baseline. Under the 1996 Act, contract commodity payments represent a large portion of the benefits received by producers and there are few planting restrictions. The major differences between a no-program scenario (if the CRP and export programs were continued) and the 1996 Act are that producers would no longer receive contract commodity payments of about $35.9 billion and would no longer be subject to farm conservation and wetland protection requirements. The loss in farm income would likely entail substantial short-term adjustments and financial stress. However, over the longer term, a no-program scenario is expected to have little or no impact on supply, demand, and prices compared with the 1996 Act for most commodities except for peanuts, sugar, and, in the initial years of the period, dairy.

Plantings would be expected to decrease marginally with little or no change in market prices. Farm income would likely be lower, but lost revenue from eliminating contract commodity payments would be partially offset by lower cash rents. Land values would be lower if there were no program. In the aggregate, compared with a no-program scenario, impacts of the 1996 Act on the livestock industry, input industry, consumers, and the general economy would be minimal in the long run. However, impacts in some sectors, such as those dependent on the peanut program and sugar program, may be more significant.

The economic impacts of the peanut program provisions of the 1996 Act, including eliminating the peanut quota floor (which is addressed in a separate rule), reducing the quota price support level, and requiring the program to operate at no net cost are expected to reduce producers' revenue by $1.5 billion from 1996 to 2002, while taxpayers are expected to benefit by avoiding costs of $0.5 billion compared with the FY 1997 President's Budget baseline. Consumers benefit from lower prices. Quota lease and capitalized values of the quota are also expected to decline.

Under a ''no peanuts program'' scenario, producer prices would decline, resulting in gains to first buyers of peanuts of $150 to $160 million annually, compared with the 1996 provisions. Over the 7-year life of the program, the capitalized gain to first buyers would total about $800 million, assuming a 10 percent capitalization rate. Beet sugar production under the 1996 Act is expected to expand slightly faster than under the FY 1997 President's Budget baseline because of the elimination of domestic marketing allotments. Production of raw cane sugar is expected to be the same. Sugar imports are forecast to be somewhat lower under the 1996 Act reflecting the increase in beet sugar production. Based on the FY 1997 President's Budget baseline, the sugar program is expected to offer nonrecourse loans in most years covered by the 1996 Act because the tariff rate quota is expected to be above 1.5 million short tons, raw value. Sugar prices are not expected to change significantly on average because supply is expected to be unchanged from the FY 1997 President's Budget baseline. The 1996 Act is expected to increase Federal revenues by $49 million over FY's 1996–2002, compared with the FY 1997 President's Budget baseline, by increasing assessments on sugar marketed.

One study estimated, under the assumptions of a low initial world price for raw sugar, averaging 7.5 cents per pound, and unilateral elimination of the U.S. sugar program, that the U.S. program increased the domestic sugar price by an average of 13 cents per pound from 1984 to 1989. The study estimated that this domestic price premium cost U.S. sweetener users $2.8 billion per year; increased returns to sugarcane growers, sugar beet growers, and sweetener processors by $2.1 billion; increased returns to foreign quota holders by $403 million; and cost other foreign sugar suppliers $2.3 billion (by lowering the world price); and benefitted foreign consumers $2.2 billion (1988 dollars).

Another study estimated that trade liberalization by the U.S., the European Economic Union, China, and the former Soviet Union in sugar would result in a domestic price of 22.4 cents per pound, which is about the current domestic price under existing U.S. trade restrictions. Since beet sugar production costs are lower than raw cane sugar production and refining costs in the United States, very little disruption of the domestic sugar industry would be expected with multilateral deregulation of the world sugar market.

In the dairy sector, milk production is expected to be lower compared with the FY 1997 President's Budget baseline as dairy farmers respond to lower milk prices. Consumers benefit from lower milk and dairy product prices as product clears through the marketplace as the support program is being phased out by January 1, 2000. Cash receipts in the dairy sector are lower under the 1996 Act, also a result of the price support program being phased out. Lower farm milk prices are only partially offset by the elimination of the assessment on all milk marketings that became effective on May 1, 1996.

Lower producer prices under a ''no dairy program'' scenario would result in gains to first buyers of milk of about $175 million per year over the 7-year period, FY 1996–2002, compared with the new program. Most of the gains to first buyers would occur during the first half of the period, before the support program is eliminated. Lower farm-level prices for milk could provide a temporary windfall to manufacturers and retailers of milk and dairy products, but competitive pressures would be expected eventually to lead to much of the reduction in producer prices being passed on to retail consumers.

The 1996 Act provides the Secretary some limited implementation options. Alternative options, reasons for selecting a particular option, and

analyses of the individual commodity sector impacts of the 1996 Act, compared with FY 1997 President's Budget, are presented in the assessment.

For further information, the following individuals may be contacted regarding the different parts of the assessment:

Part I—Contract Commodity Payment, Marketing Assistance Loan, and Related Provisions of the Agricultural Market Transition Act (Contact: Philip Sronce, 202–720–2711)

Part II—Sugar (Contact: Dan Colacicco, 202–720–6733)

Part III—Dairy (Contact: John Mengel, 202–720–6733)

Part IV—Peanuts (Contact: Verner Grise, 202–720–5291)

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases-10.051; Cotton Production Stabilization-10.052; Feed Grain Production Stabilization-10.055; Wheat Production Stabilization-10.058; Rice Production Program-10.065; and Conservation Reserve Program-10.069.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Office of the Secretary, FSA and CCC are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the Office of the Secretary, FSA and CCC are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 161(d) of the 1996 Act requires that the regulations necessary to implement Title I of the 1996 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. These regulations affect the immediate planting and marketing decisions of an extraordinarily large number of agricultural producers. In addition, with respect to the revision of 7 CFR part 2, 5 U.S.C. 553 specifically provides that rules relating to agency organization may be published without the issuance of a general notice of proposed rulemaking. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, this rule is effective upon publication in the Federal Register.

Background

1. Part 2 Delegations of Authority by the Secretary of Agriculture and General Officers of the Department

Delegations of authority are made from the Secretary to the Under Secretary for Farm and Foreign Agricultural Services and from the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, FSA, to formulate policies and administer programs authorized by Title I of the 1996 Act. In addition, an erroneous delegation is corrected and obsolete delegations are removed.

2. Part 718 Reporting and Maintaining Farm Records and General Compliance Provisions

The regulations regarding the determination of acreage and compliance, such as requirements for acreage reports, are amended to conform to the program changes required by the 1996 Act. As a result of the broad planting flexibility under the new regulations producers will no longer be required to submit acreage reports on the production on the farms. Reporting will only be required regarding the planting of fruits and vegetables in order to receive production flexibility contract payments. Producers who seek marketing assistance loans shall file an acreage report, before harvest, on the production to be used for the marketing assistance loan. No additional voluntary reporting by producers will be considered for the purpose of determining benefits under future programs. Section 718.7 is reorganized to reduce its size and improve clarity. Also, internal agency procedures are removed from the regulations and obsolete references are updated or removed. Parts 719—Reconstitution of Farms, Allotments, Normal Crop Acreage, and Preceding Year Planted Acreage, 720—General Policy and Interpretations, 790—Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary, 791—Authority to Make Payments When There Has Been a Failure to Comply Fully With the Program, 793—Rule of Fractions, and 796—Denial of Program Eligibility for Controlled Substance Violations are consolidated into part 718 for efficiency and ease of use.

3. Part 729 Peanuts

The 1996 Act amended the Agricultural Adjustment Act of 1938 (the 1938 Act) to provide a poundage quota program for the 1996 through 2002 crops of peanuts. Quota matters under the 1938 Act will be addressed in a separate rule. This rule amends part 729 to implement the provision of section 155 of the 1996 Act dealing with peanut marketing assessments. The price support provisions of section 155 will be addressed in the portion of this rule amending part 1446.

Under section 155(g)(1) of the 1996 Act, the Secretary is directed to collect a nonrefundable marketing assessment on peanuts produced in each of the 1996 through 2002 crops on all peanuts marketed and considered marketed in the same manner as the assessment previously collected under provisions of the 1949 Act. The per-pound basis for the assessment as a percentage of the national average quota or additional peanut loan rate for the applicable crop is, for producers, 0.6 percent for the 1996 crop and 0.65 percent for the 1997 through 2002 crops, and, for the first purchaser, 0.55 percent for each of the 1996 through 2002 crop years. Sections 155(d)(4) and (7) of the 1996 Act provide further that the amounts of the assessments not required to offset losses in area quota marketing pools shall be transferred to the Treasury.

Further, section 155(d)(8) of the 1996 Act requires that the marketing

assessment collected from producers be increased if the offsets, as provided in part 1446 of this title, are not sufficient to cover losses in an area quota pool. The increased assessment will be in an amount determined by the Secretary to be necessary to cover such losses and shall apply to the quota peanuts produced in the marketing area covered by that pool.

Accordingly, this rule amends § 729.316, and adds a new § 729.317. Any shortfall in additional assessments made to cover losses will be made up in increased assessments in subsequent years. Any excess collections from increased assessments to cover losses shall be held by the Secretary to cover net losses in the pool in subsequent years in the same marketing area.

4. Part 1400 Payment Limitation and Payment Eligibility

This rule clarifies the existing policy and implements the payment limitation and eligibility requirements of the 1996 Act. The payment limitation and eligibility provisions formerly found at parts 1497 and 1498 are combined and revised in a new part 1400. The 1996 Act provides a $40,000 limitation per fiscal year on payments made to a person under one or more production flexibility contracts, a $50,000 limitation on the total of adjustments made pursuant to sections 113(c)(1) and 113(c)(2) of the 1996 Act and paid to person under one or more flexibility contracts, and a $75,000 limitation on the amount of marketing loan gains and loan deficiency payments a person may receive. The 1996 Act applies the payment limitation and payment eligibility requirements and restrictions of the Food Security Act of 1985 to payments made under production flexibility contracts, marketing loan gains, and loan deficiency payments. This rule will also update regulations providing that persons who are not U.S. citizens are not eligible for farm program payments, and make other minor changes to enhance the implementation of the 1996 Act.

5. Parts 1401 and 1470 Commodity Certificates, In Kind Payments, and Other Forms of Payment

Chapter XIV provides regulations for programs operated by the Commodity Credit Corporation (CCC). Currently, three agencies operate programs under CCC: the Farm Service Agency (FSA), the Natural Resources Conservation Service (NRCS), and the Foreign Agricultural Service (FAS). Currently, regulations for each agency are not all co-located. The chapter will be reorganized to combine and unify each agency's regulations in easily identifiable parts, as follows:

Parts 1400–1409 General CCC Regulations and Policies
Parts 1410–1464 FSA
Parts 1465–1479 NRCS
Parts 1480–1499 FAS

Part 1470 is thus redesignated as part 1401.

6. Part 1402 Policy for Certain Commodities Available for Sale

This final rule amends part 1402 to delete the requirement that general sales offering information will be issued on a monthly basis.

7. Part 1405 Loans, Purchases and Other Operations

This final rule implements changes to § 1405.1 by incorporating the additional 1 percent interest requirement set forth for CCC loans, and reserves § 1405.5. Also, the rule implements crop insurance requirements and contract violation provisions set forth by the 1996 Act.

8. Part 1412 Production Flexibility Contracts for Wheat, Feed Grain, Rice, Upland Cotton

This final rule sets forth the rules and regulation for a new Federal farm subsidy program. In the past, payments were determined by taking into consideration the acreage planted to a crop and acreage devoted to a conserving use. In addition, payments were only made when the price of a commodity fell below an established (''target'') price set forth in the 1949 Act. The new program decouples farm program payments from program crop planting requirements. This rule allows farms having a 1996 crop acreage base established for one or more of the following crops: wheat, corn, barley, grain sorghum, oats, cotton and rice (''contract commodities'') to be enrolled under a Production Flexibility Contract for a period of 7 years. A producer may enroll the farm and one or more contract commodities in a 7-year contract. Contract payments are calculated by multiplying 85 percent of the contract acreage times the farm program payment yield for the crop times the payment rate for the crop.

The major provisions of these regulations include the following provisions. Farms with previous years' crop acreage bases established on a rotation basis for a crop shall have 1996 crop acreage bases for the crop established by dividing the sum of planted and considered planted acreage for the rotation cycle by the number of years in the rotation cycle. The sign-up period for the program begins May 20, 1996, and ends August 1, 1996. A producer on an enrolled farm may plant any crop, including crops other than the contract commodity, on acreage normally devoted to a contract commodity crop except for certain fruits and vegetables, for which limitations are set forth in this regulation. Tobacco may be planted on contract acreage; however, tobacco acreage on a farm cannot exceed that farm's tobacco quota or allotment. Any 1996 crop acreage bases on a farm not enrolled by August 1, 1996, shall not be eligible to be enrolled after that date unless such crop acreage base is released upon expiration of a Conservation Reserve Program (CRP) contract that expires or is voluntarily terminated after August 1, 1996. Producers who violate a Production Flexibility Contract may be denied benefits under the Production Flexibility Contract for its duration, depending on the nature of the violation. No acreage reduction program requirements apply to this program. The regulations also provide that landowners must provide fair treatment to sharecroppers and tenants in order for the landowner to receive program benefits.

9. Part 1421 Loans and Loan Deficiency Payments for Grains and Similarly Handled Commodities

Part 1421 provided price support loan and loan deficiency payments for the 1991 and subsequent crops of wheat, feed grains, rice, oilseeds, and loans for farm-stored peanuts. The 1996 Act continues to authorize loan and loan deficiency payments for these commodities from 1996 through 2002. The 1996 Act does not authorize the following: (1) purchase agreements; (2) farmer-owned reserve (FOR); (3) a rice marketing certificate program; (4) loans for high moisture barley; (5) loans and loan deficiency payments for rye; and (6) loan extensions. This rule removes these references from part 1421. The 1996 Act changes the repayment rate for rice loan and loan deficiency payments and the maturity date for oilseeds. Provisions of part 1421 have been amended as necessary to delete price support terminology; and to reflect the reorganization of the Department of Agriculture (USDA) pursuant to the Department of Agriculture Reorganization Act of 1994, Public Law 103–354, 7 U.S.C. 6991.

Rules for the Rice Marketing Certificate Program are deleted.

10. Part 1425 Cooperative Marketing Associations

This rule implements changes in the regulations for cooperative marketing

associations (CMA's) that obtain loan and loan deficiency payments on behalf of their members for the 1996 through 2002 crop years. The 1996 Act does not authorize: (1) loans and loan deficiency payments for rye and honey; (2) wool and mohair payments; and (3) purchase agreements. This rule removes rye, honey, wool, and mohair as approved commodities, removes purchase agreement provisions, deletes price support terminology, makes changes necessary to reflect the reorganization of USDA, and removes definitions found elsewhere in this title. The term ''cooperative'' is amended to CMA.

11. Part 1427 Cotton Loan Programs

The 1996 Act sets forth the statutory authority for the cotton loan program. This rule makes amendments to part 1427 that will incorporate applicable provisions of the 1996 Act, provide greater clarity, and remove obsolete provisions. The provisions of these regulations are generally the same as regulations in effect with regard to the 1991 through 1995 crops.

However, § 1427.7(a) has been amended to remove the provisions for 8-month extensions of upland cotton and extra long staple cotton nonrecourse loans. The 1996 Act prohibits extensions for all loans authorized under the 1996 Act. CCC will continue the provisions for 8-month loan extensions for the 1995 upland cotton crop. Sections 1427.8 and 1427.11(g) and (h) have been amended to remove the provisions that the amount of the loan shall be reduced by the amount of any unpaid warehouse receiving charges, warehouse storage charges in excess of 60 days, or charges for new bale ties. However, § 1427.13(e) has been added to require the producer, if the producer elects to forfeit cotton to CCC, to pay to CCC all warehouse receiving and storage charges that accrued on such forfeited cotton prior to the date such cotton is tendered for loan.

Section 1427.19 has been amended to modify the repayment level for upland cotton loans beginning with the 1996 crop. The 1996 Act removed the minimum repayment rate of 70 percent of the national average loan rate. Under the 1996 Act, upland cotton loans may be repaid at the lesser of: (1) the loan level and charges, plus interest; or (2) the adjusted world price. In addition, § 1427.19 has been amended to clarify when CCC will pay warehouse storage charges to permit upland cotton loans to be repaid at the adjusted world price. Report language accompanying the 1996 Act provides that current policy for establishing the repayment rate for upland cotton should be continued, including crediting storage costs against the repayment amount. Accordingly, the regulations provide that producers will be responsible for paying storage costs, except when producers repay a loan at a lower rate when the adjusted world price of upland cotton is less than the total of the principal amount of the loan plus accrued interest and storage costs accruing after the cotton was pledged as collateral for the loan. This is the same procedure as was used in prior years. However, producers will now be responsible for storage charges accruing before the loan was obtained.

Section 1427.24 has been reserved. The 1996 Act does not authorize recourse loans except for recourse seed cotton loans, which are covered in subpart D of this part.

Section 1427.100 is amended to set forth changes to the upland cotton user marketing certificate program. A proposed rule was published in the Federal Register on March 13, 1996, at 61 FR 10289, requesting comments on a proposal to address bunching of export sales under the upland cotton user marketing certificate (Step 2) program by setting the exporter payment rate on the date the cotton is shipped. Comments were also solicited on several alternative policies to fix bunching such as prohibiting sales through third parties or to foreign affiliates, or requiring exporters to provide evidence of a *bona fide* export sales contract, identify the end user, or disclose the amount of the Step 2 payment applied to the sales price.

The 30-day public comment period ended on April 12, 1996. A total of 123 comments were received from 85 producers, nine ginners, seven regional producer associations, five producer co-ops, five U.S. textile manufacturers, five shippers, the Embassy of Australia, and six national organizations including the American Cotton Shippers Association (ACSA), the National Cotton Council (NCC), the NCC Producer Steering Committee, the American Textile Manufacturers Institute (ATMI), the National Cotton Ginner's Association (NCGA) and the Cottongrowers Warehouse Association (CWA).

One hundred and thirteen comments supported the proposal, including all 85 producers, nine ginners, and five producer co-ops as well as six regional producer associations, four textile manufacturers, the NCC Producer Steering Committee, NCGA, CWA and ATMI. The following reasons for supporting the proposal were cited by one or more of those who commented: solves the bunching problem, fixes an otherwise good program; maintains competitiveness in both domestic and export markets; brings the program closer in line with the original legislative intent; puts exporters and domestic mills on an equal basis; removes the incentive for exporters to bunch; limits program abuse; limited transportation facilities would make bunching under this proposal too hard and expensive to control; results in a return to normal marketing practices; gives exporters an incentive to ship U.S. cotton on optional origin contracts; and enables exporters to be competitive on future sales.

ACSA, the Embassy of Australia, one regional producer association and four shippers opposed the proposal. The following reasons were cited by one or more of those who commented: compromises the competitiveness feature of the Step 2 program by decoupling the payment rate from the sale date; could result in bunching, disrupt shipping, and cause congestion at ports and container terminals; will not increase sales of U.S. cotton in foreign markets; does not remove the potential for Step 2 to produce a high value payment rate, unrelated to the market, and may require further changes in the future to fix any unintended effects; increases the reporting burden on program participants and USDA; is a give-away program providing the exporter with a windfall profit; will generate negative publicity; may indirectly subsidize foreign buyers who compete with U.S. textile mills if export contracts include agreements that pass on to buyers all or part of any Step 2 payment received by the exporter; the U.S. Treasury would not receive income tax revenue on payments shared with foreign buyers; may result in higher cotton imports under Step 3 (import quota), which would lower producer prices; and shippers would be the only entities to reap the benefits of the program.

Several other comments on the proposed rule were received. One textile manufacturer indicated that the Step 2 program should be for mills only, but if exporters were included, the payment rate should be set only when the final destination is declared. ACSA and two shippers recommended that the Step 2 program be discontinued for exporters. The Embassy of Australia recommended that the Step 2 program be eliminated entirely. Although NCC supported a rule change to address bunching, the organization could not achieve unanimity among the seven industry segments on a specific solution, so NCC could not endorse the proposal. One shipper commented that the Step 2 program is fundamentally flawed and

cannot be fixed by this or any other proposal.

Several comments about alternative policies were received. The NCC Producer Steering Committee and three regional producer associations stated that basing the exporter payment rate on the date the final destination is declared would also solve the bunching problem. The Embassy of Australia indicated that, like the proposal, the alternative policies listed in the proposed rule would likely have negative, unintended consequences. One regional cotton producer association recommended that USDA continue to study alternatives to improve Step 2.

As pointed out in several comments, the proposal would decouple the exporter payment rate from the sales date. However, to derive a fair solution to bunching, the interests of all participants must be weighed. Although the legislative intent was to make U.S. cotton competitive, Step 2 was not intended to favor one subset of participants over another in the process. In the past, U.S. mills and exporters without foreign affiliates have been at somewhat of a disadvantage vis-a-vis exporters with foreign affiliates. Mills cannot lock in payments until the cotton is actually consumed, whereas under current procedures, exporters lock in their payment rate on the sale date, which can be months before the cotton is actually shipped. Exporters with foreign affiliates have a greater capacity to do this than exporters without such affiliates. To leave existing rules in place for exporters would continue to place these groups at a disadvantage. Also, the 1996 Act put a $701 million cap on Step 2 payments for fiscal years 1996 through 2002. The proposed rule would make access among participants to Step 2 payments more equitable.

Disruptions in the infrastructure caused by exporters' trying to bunch their exports are not anticipated. Due to the physical limitations of the transportation system, exporters will not be able to bunch exports to the extent they were able to bunch sales contracts.

The recordkeeping and reporting burden on both program participants and CCC would be reduced significantly under the proposed rule. Exporters would only report to CCC those exports made during a week a payment rate was in effect. There would no longer be a need to track current-crop/forward-crop shipment data nor would the requirement to register sales cancellations and replacements be retained. Also, as a result of changes to the exporter side, CCC has determined that domestic mills would no longer have to report as much data about their consumption during weeks in which the payment rate is zero. Adopting this proposal would simplify program administration for CCC and all program participants.

ACSA, which represents a large segment of the U.S. shipping industry, called for the removal of exporters from the Step 2 program. One shipper stated that the provisions of the new farm bill should provide ''all tools necessary to compete in foreign markets.'' CCC has no authority to exclude exporters from the Step 2 program or to eliminate the Step 2 program. Whenever certain price conditions occur, CCC is obligated by law to issue Step 2 payments to program participants who have signed an agreement. Since new agreements must be signed in order to continue to participate in the program, exporters or domestic mills who believe that participation in the program will not serve their interests may elect to not sign.

The 1996 Act Statement of Managers directed the Secretary to eliminate the bunching problem to the extent practicable without significantly disrupting normal marketing processes in domestic and export markets. The industry did not offer alternatives except to suggest that basing the exporter payment rate on the date the final destination of the cotton is declared would solve the bunching problem.

As one comment pointed out, the proposal may not remove the potential for high payment rates. However, bunching, not high payment rates, was identified in the proposed rule as the problem to be addressed. The payment rate calculation is designed to close the gap between U.S. and world prices, which may at times be significant. If a high payment rate occurred, mills and exporters would have equal access to payments under the proposed rule.

Under current rules, with the payment rate determined as of the date of sale, bunching of sales in the Step 2 program may have given foreign mills an advantage over domestic mills by giving foreign mills access to U.S. cotton with high Step 2 payments. Although it is true that under the proposed rule foreign buyers will still benefit as exporters pass on to them all or part of the Step 2 payment, the elimination of bunching should prevent the fixation of season-high Step 2 payment rates on large volumes of exports, as has been observed in past years. Overall, the program should be fairer to U.S. mills.

After considering these comments, this rule adopts as final the proposed rule published on March 13, 1996. However, because new legislation was enacted on April 4, 1996, two additional changes to the Step 2 regulations are incorporated into the final rule. First, the 1996 Act extended the Step 2 program through July 31, 2003, and second, the legislation provided that total expenditures for the program during fiscal years 1996 through 2002 shall not exceed $701,000,000. Obligations incurred by CCC to exporters under this program before April 5, 1996, are not subject to this funding restriction. Obligations incurred by CCC on or after April 5, 1996, are subject to the $701,000,000 restriction.

CCC has determined that cotton contracted for delivery after September 30, 1996, by eligible exporters will be covered under the new regulations and the terms and conditions of the revised agreement. Exporters will be eligible to receive Step 2 payments on such cotton if they sign a new agreement and if a payment rate is in effect during the week the cotton is exported. However, if, prior to July 18, 1996, a positive payment rate was secured for cotton sold for delivery after September 30, 1996, CCC will make payments to eligible exporters in accordance with the terms and conditions of CCC–1045 (4–15–94) Revision 2. Any payments made on cotton contracted for delivery after September 30, 1996, will count against the $701,000,000 statutory limit.

The new rules will become effective on July 18, 1996. To continue to participate in the Step 2 program, exporters and domestic users must sign and return the revised agreement to CCC.

12. Part 1430 Dairy Products

The amendments to the dairy regulations made by this rule address requirements of the 1996 Act regarding: (1) The price support level for milk; (2) ineligibility of certain products for price support purchase when State-allowed manufacturing allowances exceed certain levels; (3) the Dairy Refund Program; (4) the deletion of regulations for the Dairy Termination Program; (5) a future recourse loan program for milk products; and (6) technical revisions to part 1430 to reflect a recent USDA reorganization. The 1996 Act addresses a number of other dairy issues, such as milk promotion, export programs, and Federal marketing orders. Other rules and/or notices regarding those subjects will be issued as appropriate.

Section 141 of the 1996 Act authorizes the Milk Price Support Program from May 1, 1996, through December 31, 1999. Authority for price support previously provided by section 204 of the 1949 Act, as amended by the Food, Agriculture, Conservation, and

Trade Act of 1990 (the 1990 Act), was repealed as of May 1, 1996. Milk prices are to be supported through the purchase of butter, nonfat dry milk and cheese. Under the 1996 Act, the levels of support for milk containing 3.67 percent milkfat are: $10.35 per hundredweight during calendar year 1996, $10.20 per hundredweight during calendar year 1997, $10.05 per hundredweight during calendar year 1998, and $9.90 per hundredweight during calendar year 1999.

Provisions for price support, previously codified at § 1430.282, have been deleted and § 1430.2 has been added to implement the 1996 Act provisions. Section 1430.1 has been added to provide the definitions for Subpart A—Price Support Program for Milk.

Section 141 of the 1996 Act further provides that: (1) The CCC support purchase prices for each of the products of milk (butter, cheese, and nonfat dry milk) announced by CCC shall be the same for all of that product sold by persons offering to sell the product to CCC, and (2) the purchase prices shall be sufficient to enable plants of average efficiency to pay producers, on average, a price that is not less than the rate of price support in effect for milk. The Secretary may allocate the rate of price support between the purchase prices for butter and nonfat dry milk in a manner that will result in the lowest level of CCC expenditures, or achieve such other objectives as the Secretary considers appropriate. The Secretary may make such adjustments not more than twice during a calendar year. Purchase announcements will reflect these provisions.

Also, however, § 1430.3 is added to provide that CCC will suspend the purchase of butter, cheese and nonfat dry milk from plants in a State that provides, through its regulation of milk prices, manufacturing allowances in excess of those authorized by section 145 of the 1996 Act. The maximum manufacturing allowances allowed by section 145 are: (1) $1.65 per hundredweight for milk manufactured into butter and nonfat dry milk; and (2) $1.80 per hundredweight for milk manufactured into cheese. The new regulation also specifies appeal procedures.

The Dairy Refund Program, as authorized by section 204(h) of the 1949 Act, provided for a reduction in the price dairy producers receive and a method by which they could obtain a refund. Section 141(g) of the 1996 Act repeals section 204 of the 1949 Act, effective May 1, 1996. However, section 141(e)(1) of the 1996 Act authorizes a refund of the total reduction in a producer's price during calendar year 1996 to producers who provide evidence that they did not increase total milk marketings in calendar year 1996 compared to their total marketings in calendar year 1995. Section 1430.362 is added to provide for refunds of 1996 reductions in price and to clarify procedures and ongoing policies regarding refund payments and producer eligibility.

Also, rules for the Dairy Termination Program (DTP) are deleted from part 1430 because the contract periods for DTP contracts have expired. This will not affect rights and liabilities under any DTP contract.

The Recourse Loan Program for Commercial Processors of Dairy Products is authorized by section 142 of the 1996 Act, and becomes effective on January 1, 2000. The program will offer recourse loans to commercial processors of eligible dairy products to assist in the management of inventories of eligible dairy products and to assure a degree of price stability for the dairy industry. These eligible dairy products are cheddar cheese, butter, and nonfat dry milk. The loan rates will reflect a milk equivalency value of $9.90 per hundredweight of milk containing 3.67 percent butterfat. The parties receiving the loans will be liable for full repayment of the loan principal and interest. Regulations have been added at subpart C of part 1430 to provide for this program.

Finally, provisions of part 1430 have been amended as necessary to reflect the reorganization of USDA.

13. Part 1434 General Price Support Regulations for Honey

The 1996 Act did not authorize loan and loan deficiency payment programs for the 1996 and subsequent crops of honey. This action will remove the regulations for the program.

14. Part 1435 Sugar Program

Section 156 of the 1996 Act repeals section 206 of the 1949 Act and institutes new sugar loan and marketing assessment programs. The regulations governing the administration of the sugar loan program will be extended through the 2002 crop year and changed to reflect the changes mandated by the 1996 Act, which are as follows:

(1) Section 156(a) requires the national loan rate for raw cane sugar to be fixed at 18 cents per pound;

(2) Section 156(b) requires the national loan rate for refined beet sugar to be fixed at 22.90 cents per pound;

(3) Section 156(e) requires the Secretary to offer recourse loans unless the tariff-rate quota (TRQ) is established at, or increased to, a level above 1.5 million short tons, raw value, at which time CCC must offer nonrecourse loans and convert any existing recourse loans to nonrecourse loans; and

(4) Section 156(g) requires a penalty of 1 cent per pound, raw value, for raw cane sugar and 1.072 cents per pound of refined beet sugar to be assessed on the forfeiture of sugar pledged as collateral for nonrecourse loans.

Section 156(c) requires the Secretary to reduce the loan rates if the major sugar producing nations reduce their support for their domestic sugar industries more than their commitments as part of the Uruguay Round Agreements Act. CCC will promulgate new regulations should such a reduction occur.

This rule also eliminates redundancies, clarifies terms, and simplifies the Sugar Loan Program regulations. These regulations are also modified to reflect the 1996 Act's authorization of the loan program through the 2002 crop year. The definitions in §§ 1435.101, 1435.201, and 1435.401 are consolidated into § 1435.2. Definitions of recourse and nonrecourse loans and the tariff-rate quota have been added. All references to the Deputy Administrator for State and County Operations (DASCO) are changed to the Deputy Administrator for Farm Programs (DAFP) to reflect the reorganization of USDA.

Part 1435 is renumbered to reflect the complete reorganization of the part. A new section on loan types, § 1435.102, is added to reflect the availability of recourse loans and nonrecourse loans. The fixed national loan average rates are listed in § 1435.103. Section 1435.104 is expanded to consolidate requirements previously found in § 1435.7 and § 1435.9. Supplemental loans remain limited to sugar produced from sugarcane or sugar beets harvested during July, August, and September. Storage facility requirements are now set forth in § 1435.108. Section 1435.107, Settlement and Foreclosure, has been organized to reflect the differences between the settlements of nonrecourse loans and recourse loans. The bonding and other provisions of § 1435.11 that required loan recipients to provide CCC with financial assurances that producers would be paid the minimum grower payments have been deleted from the regulations.

Section 156(f) of the 1996 Act requires sugar marketing assessments to increase 25 percent for the fiscal years (FY) 1997 through 2003. The assessment on raw cane sugar increases from 1.1 percent to 1.375 percent of the loan rate for raw

cane sugar, or an increase from 0.198 cents to 0.2475 cents per pound in FY 1997. The assessment on refined beet sugar increases from 1.1794 percent to 1.47425 percent of the loan rate for raw cane sugar. Since the raw cane sugar loan rate is fixed at 18 cents per pound, the assessment rate increases from 0.2123 cents to 0.2654 cents per pound, refined basis. If the raw cane sugar loan rate were to be reduced, the marketing assessments would be reduced accordingly and put forth in revised regulations.

Section 156(h) of the 1996 Act extends the information reporting requirements through the 2002 crop year. The suspension of sugar marketing allotments permits the simplification of the information reporting regulations. The exhibits containing the reporting forms have been removed from the revised regulations.

Section 171(a)(1)(E) of the 1996 Act suspends sugar marketing allotments for the 1996 through 2002 crop years. The regulations regarding sugar marketing allotments are removed because the crop year ends June 30, 1996, and the deadline for announcing marketing allotments for this fiscal year has passed.

Section 171(b)(1)(j) suspends section 401(e)(2) of the 1949 Act, which provides for benefits to be paid to producers in the event of bankruptcy or insolvency of processors. The regulations regarding protection for sugar beet and sugarcane producers are, therefore, removed.

15. Part 1446 Peanuts

The 1996 Act amends the 1938 Act and the 1949 Act to provide, for the 1996 through 2002 crop years, the peanut price support program and for the contracting, handling and disposing of additional peanuts. The peanut price support regulations that relate to the making of warehouse-stored price support loans on peanuts and other activities are found at part 1446. The peanut marketing, storage, handling and disposition requirements for peanuts for the 1991 through 1995 crops shall continue to be governed by the regulations codified at part 1446, as of January 1, 1996.

This rule also implements provisions of section 155 of the 1996 Act dealing with peanut warehouse-stored loans, contract additional peanuts, peanut handler operations and other matters. Specifically, this rule changes the peanut regulations in part 1446 regarding these provisions as follows:

1. In § 1446.103, the definition of ''eligible producer'' has been changed, in accordance with provisions of the 1996 Act, to provide that, under the conditions stated in the section, producers who pledge 100 percent of the crop as loan collateral for 2 consecutive years may not be eligible for price support.

2. In § 1446.103, the definition of ''Support rate—National Average'' has been changed to reflect the new statutorily set national average price support rate for quota peanuts of $610.00 per ton.

3. In § 1446.307, the disaster transfer provisions for producers who transfer Segregation 2 or Segregation 3 peanuts from additional loan pools to quota loan pools have been changed, as required by the 1996 Act, by limiting the quantity of peanuts eligible for such a transfer to 25 percent of the total farm quota pounds, excluding pounds transferred in the fall and by reducing the support rate on such transferred peanuts to 70 percent of the quota support rate for the marketing year in which the transfers occur.

4. In § 1446.308(a)(2), the New Mexico pool eligibility requirements have been changed, as required by the 1996 Act, by adding a clause that controls the quantity of Valencia peanuts that are physically produced in Texas that may be placed in the New Mexico pools based on amounts previously produced in Texas on farms administratively located in New Mexico.

5. In § 1446.308 the rules have been amended to implement new provisions of the 1996 Act relating to the recovery of losses in area quota loan pools, including provisions for increased marketing assessments to make the peanut program a ''no-net-cost'' program.

6. Miscellaneous changes to the regulatory text have been made as a result of the USDA reorganization, the need to update references to forms and to change dates, and for technical and grammatical sufficiency.

16. Part 1468 Wool and Mohair

The National Wool Act of 1954, as amended, terminated the Wool and Mohair program effective December 31, 1995. This action will remove the regulations for the program.

17. Parts 1477, 1478, and 1479 Disaster Payment Program for 1990 and Subsequent Crops, Tree Assistance Program, and Forage Assistance Program

Authority for these programs has expired. Parts 1477, 1478, and 1479 are therefore removed.

Paperwork Reduction Act

As provided in section 161(d) of the 1996 Act, the Paperwork Reduction Act is not applicable to these regulations. However, the forms necessary to conduct these programs have been submitted for clearance to the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

List of Subjects

7 CFR Part 2

Authority delegations (Government agencies).

7 CFR Part 718

Acreage inspection, Acreage measurement, Acreage reporting, Compliance, Controlled substance violation, Crop insurance requirement, Delegations of Authority, Eminent domain, Farm Constitution, Finality rule, Reconstituting farms, Signature requirements, Substantive change, Tolerance, Transfer of allotments and quotas, Variances.

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

7 CFR Part 1400

Aliens, Production Flexibility Contracts for Wheat, Feed Grains, Rice, and Upland Cotton, Price Support programs

7 CFR Part 1405

Federal crop insurance, Loan programs-agriculture, Price support programs.

7 CFR Part 1412

Production Flexibility Contracts for Wheat, Feed Grain, Rice, Upland Cotton.

7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

7 CFR Part 1425

Cooperatives, Financial requirements, Loan and loan deficiency payment programs—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1427

Cotton loan programs/agriculture, Packaging and containers, Marketing certificate programs, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

7 CFR Part 1430

Agriculture, Assessment, Dairy products, Manufacturing allowances, Milk, Price support program, Recourse loans.

7 CFR Part 1434

Honey, Loan program—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1435

Loan programs/agriculture, Reporting and recordkeeping requirements, Sugar.

7 CFR Part 1446

Loan programs—agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

7 CFR Part 1468

Assistance grant program—agriculture, Livestock, Mohair, Reporting and recordkeeping requirements, Wool.

For the reasons set out in the preamble, 7 CFR Chapters I, VII and XIV are amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 is revised to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 C.F.R. 1949–1953 Comp., p. 1024.

2. Section 2.16(a)(1) is amended by adding a new paragraph (a)(1)(xxiv) to read as follows:

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) * * *

(1) * * *

(xxiv) Formulate policies and administer programs authorized by Title I of the Federal Agriculture Improvement and Reform Act of 1996.

* * * * *

3. Section 2.16 is amended by removing and reserving paragraphs (a)(3)(xxix) and (a)(3)(xxx).

4. Section 2.42(a) is amended by adding paragraph (a)(44) to read as follows:

§ 2.42 Administrator, Farm Service Agency.

(a) * * *

* * * * *

(44) Formulate policies and administer programs authorized by Title I of the Federal Agriculture Improvement and Reform Act of 1996.

* * * * *

5. Section 2.42(a)(43) is amended by removing the term ''charge'' and inserting the term ''arrange'' in its place.

§ 2.43 [Amended]

6. Section 2.43 is amended by removing and reserving paragraphs (a)(29) and (a)(30).

7. Chapter VII is amended by revising part 718 to read as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

Subpart A—General Provisions

Sec.

Subpart B—Determination of Acreage and Compliance

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Acreages

Authority: 7 U.S.C. 1373, 1374, 7201 *et seq.*; and 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 718.1 Applicability.

(a) This part is applicable to all programs set forth in Chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA).

(b) The provisions of this part will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees (State and county committees).

(c) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(d) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(e) No provisions or delegation herein to a State or county committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(f) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 718.2 Definitions.

Except as provided in individual parts of chapters VII and XIV of this title, the following terms shall be as defined herein:

Administrative variance (AV) means the amount by which the determined acreage may exceed the effective allotment and be considered in compliance with program regulations.

Agricultural Use means devoting the land to annual or perennial crops, including conserving uses, pasture, aquaculture or plantings of trees for any purpose. Land may be left fallow, but weeds must be controlled.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

Allotment crop means any crop for which acreage allotments are

established pursuant to parts 723 and 729 of this chapter.

Combination means consolidation of two or more farms or parts of farms into one farm.

Contract acreage means the quantity of acres enrolled in a contract in accordance with part 1412 of this title.

Contract commodity means a crop of wheat, corn, grain sorghum, oats, barley, upland cotton, or rice.

Controlled substances means the term as set forth in accordance with 21 CFR part 1308.

County means the County or parish of a State. For Alaska, Puerto Rico and the Virgin Islands, a county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

Crop of economic significance means a crop that has contributed in the previous year, or is expected to contribute in the current crop year, 10 percent or more of the total expected value of all crops grown by the producer. However, notwithstanding the preceding sentence, if the total expected liability under the catastrophic risk protection endorsement is equal to or less than the administrative fee required for the crop, such crop will not be considered a crop of economic significance.

Crop reporting date means date established by the Administrator, FSA, representing the final date by which the farm operator, farm owner, or properly authorized agent must report applicable crop acreage for the report to be considered timely filed.

Cropland

(1) Means land which the county committee determines meets any of the following conditions:

(i) Is currently being tilled for the production of a crop for harvest;

(ii) Is not currently tilled, but it can be established that such land has been tilled in a prior year and is suitable for crop production;

(iii) Is currently devoted to a one- or two-row shelterbelt planting, orchard, or vineyard;

(iv) Is in terraces, that, were cropped in the past, even though they are no longer capable of being cropped;

(v) Is in sod waterways or filter strips planted to a perennial cover; or

(vi) Is preserved as cropland in accordance with part 704 or 1410 of this title.

(2) Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(i) No longer used for agricultural production;

(ii) No longer suitable for production of crops;

(iii) Subject to a restrictive easement or contract that prohibits its use for the production of crops unless otherwise authorized by the regulation of this chapter;

(iv) No longer preserved as cropland in accordance with the provisions of part 704 or 1410 of this title and does not meet the conditions in paragraphs (1)(i) through (1)(vi) of this definition; or

(v) Devoted to trees (other than those set forth in accordance with part 704 or 1410 of this title, one- or two-row shelterbelt plantings, orchards, or vineyards) which were planted in the preceding year except that land planted to trees or devoted to ponds, lakes, or tanks from September 1 through December 31 of the preceding year shall retain its cropland classification for the succeeding year, and in the current year shall retain its cropland classification for the current year.

Current year means the year for which applicable allotments, quotas, and acreages, or other program determinations are established for that program. For controlled substance violations, the year that contains the date of actual conviction.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or a designee.

Determination means a decision issued by a State, county or area FSA committee or the employees of such a committee that affects a participant's participation in a program administered by FSA.

Determined acreage means that acreage established by a representative of the Department of Agriculture by use of official acreage, digitizing or planimetering areas on the photograph or other photographic image, or computations from scaled dimensions or ground measurements.

Division means the division of a farm into two or more farms or parts of farms.

Entity means a corporation, joint stock company, association limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Family member means an individual to whom a person is related as spouse, lineal ancestor, lineal descendant, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including legally adopted children;

(5) Great grandchildren;

(6) Sibling of the family member in the farming operation; and

(7) Spouse of a person listed in paragraphs (1) through (6) of this definition.

Farm means land that is being operated by one producer with equipment, labor, accounting system and management substantially separate from that of any other unit. Land on which tenants provide their own labor and equipment shall not be considered a separate farm.

Farm inspection (spot-check) means an inspection by an authorized FSA representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

Farm number means serial number assigned to a farm by the county committee for the purpose of identification.

Farm program payment yield means the yield for a crop which is determined in accordance with part 1413 of this title as in effect on January 2, 1996.

Farmland means the sum of the cropland, forest, and other land on the farm.

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

Ground measurement means the distance between 2 points on the ground, obtained by actual use of a chain tape, or other measuring device, that is expressed in chains and links.

Joint operation means a general partnership, joint venture, or other similar business organization.

Landlord means one who rents or leases farmland to another.

Measurement service means a measurement of acreage or farm-stored commodities performed by a representative of FSA and paid for by the producer requesting the measurement.

Measurement service guarantee means a guarantee provided when a producer requests and pays for an authorized FSA representative to measure acreage for FSA and CCC program participation unless the producer takes action to adjust the measured acreage. If the producer has taken no such action, and the measured acreage is later discovered to be

incorrect, the acreage determined pursuant to the measurement service will be used for program purposes for that program year.

Measurement service after planting means determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop.

Minor child means an individual who is under 18 years of age. Court proceedings conferring majority on an individual under 18 years of age will not change such an individual's status as a minor.

Nonagricultural commercial or industrial use means land that is no longer suitable for producing annual or perennial crops, including conserving uses, or forestry products.

Normal planting period means that period during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

Normal row width means the normal distance between rows of the crop in the field, but not less than 30 inches for all crops.

Operator means an individual, entity, or joint operation who is determined by the county committee as being in general control of the farming operations on the farm during the current year.

Owner means one who has legal ownership of farmland, including one:

(1) Who is buying farmland under a contract for deed;

(2) Who has a life-estate in the property; or

(3) (i) For purposes of enrolling a farm in a program authorized by Chapters VII and XIV of this title one who has purchased a farm in a foreclosure proceeding and:

(A) The redemption period has not passed; and

(B) The original owner has not redeemed the property.

(ii) One who meets the provisions of paragraph (3)(i) of this definition shall be entitled to receive benefits in accordance with such a program only to the extent the owner complies with all program requirements.

Partial reconstitution means a reconstitution that is made effective in the current year for some crops, but is not made effective in the current year for other crops, which results in having two or more farm numbers for the same farm.

Participant means one who participates in, or receives payments or benefits in accordance with any of the programs administered by FSA.

Pasture means land that is used to, or has the potential to, produce food for grazing animals.

Person means an individual, or an individual participating as a member of a joint operation or similar operation, a corporation, joint stock company, association, limited stock company, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization including any entity participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity, or a State, political subdivision or agency thereof. To be considered a separate person for the purpose of this part, the individual or other legal entity must:

(1) Have a separate and distinct interest in the land or the crop involved;

(2) Exercise separate responsibility for such interest; and

(3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

Producer means an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been produced. A producer includes a grower of hybrid seed.

Production flexibility contract means a contract entered in accordance with part 1412 of this title.

Prohibited plants means marijuana (cannabis sativa), opium poppies (papaver somniferum), coca bushes (erythroxylum coca), cacti of the genus lophophora and other drug producing plants, the planting or harvesting of which is prohibited by Federal or State law.

Random inspection means an examination of a farm by an authorized representative of FSA selected as a part of an impartial sample to determine the adherence to program requirements.

Quota means the pounds allocated to a farm for a commodity in accordance with the Agricultural Adjustment Act of 1938, as amended.

Reconstitution means a change in the land constituting a farm as a result of combination or division.

Reported acreage means the acreage reported by the farm operator, farm owner, or a properly authorized agent on form FSA–578, Report of Acreage, or other form designated by the Deputy Administrator.

Required inspection means an examination by an authorized representative of FSA of a farm specifically selected by application of prescribed rules to determine the producer's adherence to program requirements or to verify the farm operator's, farm owner's, or properly authorized agent's report.

Secretary means the Secretary of Agriculture of the United States, or a designee.

Sharecropper means one who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for its labor.

Skip-row or strip-crop planting means a cultural practice in which strips or rows of the crop are alternated with strips of idle land or another crop.

Staking and referencing means determining an acreage before planting by:

(1) Measuring a delineated area on photography or computing the chains and links from ground measurement and sketching the field or subdivision of a field; and,

(2) Staking and referencing the area on the ground.

Standard deduction means an acreage that is excluded from the gross acreage in a field because such acreage is considered as being used for farm equipment turn-areas. Such acreage is established by application of a prescribed percentage of the area planted to the crop in lieu of measuring the turn area.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Subdivision means a part of a field that is separated from the balance of the field by temporary boundary, such as a cropline which could be easily moved or will likely disappear.

Tenant means:

(1) One who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or

(2) One (other than a sharecropper) who rents land from another person in consideration of the payment of a share of the crops or proceeds therefrom.

Tolerance means for marketing quota crops, and peanuts, a prescribed amount within which the reported acreage may differ from the determined acreage and still be considered as correctly reported.

Tract means a unit of contiguous land under one ownership which is operated as a farm or part of a farm.

Tract combination means the combining of two or more tracts if the tracts have common ownership and are contiguous.

Tract division means the dividing of a tract into two or more tracts because of a change in ownership or operation.

Turn-area means the area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turnrow, headland, or endrow).

§ 718.3 State committee responsibilities.

(a) The State committee shall, with respect to county committees:

(1) Take any action required of the county committee which the county committee fails to take in accordance with this part;

(2) Correct or require the county committee to correct any action taken by such committee which is not in accordance with this part;

(3) Require the county committee to withhold taking any action which is not in accordance with this part;

(4) Review county office rates for producer services to determine equity between counties;

(5) Determine, based on cost effectiveness, which counties will use aerial compliance methods and which counties will use ground measurement compliance methods; or

(6) Adjust the per acre rate for acreage in excess of 25 acres to reflect the actual cost involved when performing measurement service from aerial slides.

(b) The State committee shall submit to the Deputy Administrator for Farm Programs, requests to deviate from deductions prescribed in § 718.108 of this part, or the error amount or percentage for refunds of redetermination costs as prescribed in § 718.111.

§ 718.4 Authority for farm entry and providing information.

(a) The provsions of this section are applicable to any farm enrolled in a program authroized by Chapter XIV of this title, all farms on which peanuts are planted for harvest (part 729 of this chapter), and all farms that have an effective tobacco allotment or quota (part 723 of this chapter).

(b) To ascertain compliance by producers to the regulations specified in paragraph (a), a representative of FSA may enter any farm specified in such paragraph. An owner, operator or producer on a farm may refuse the FSA representative entry to the farm and request FSA to provide written authorization for the entry. If entry is not allowed within 30 days of such written notification:

(1) All program benefits otherwise available with respect to such farm in accordance with such regulations shall be denied;

(2) The person objecting to the entry shall pay all costs associated with cost of the inspection by FSA of the farm;

(3) The entire crop production on the farm will be considered to be in excess of the quota established for the farm; and

(4) With respect to tobacco produced on such farm, the farm operator must furnish proof of disposition of:

(i) Burley and flue-cured tobacco which is in addition to the production shown on the marketing card issued with respect to such farm; and

(ii) Other kinds of tobacco produced on the farm and no credit will be given for disposing of any excess tobacco other than properly identified by a marketing card unless such tobacco is disposed of in the presence of a representative of FSA in accordance with § 718.109.

(c) If an owner or operator of a farm refuses to furnish reports or data which are necessary to determine benefits in accordance with the regulations specified in paragraph (a) or FSA determines that the report or data was erroneously provided through the lack of good faith by the operator or owner, all benefits will be denied with respect to the farm which would otherwise be available in accordance with the program under which the report or data is requested.

§ 718.5 Delegations of authority.

The State committee or State Executive Director, as authorized by the Deputy Administrator may, in accordance with instructions issued, exercise the authority provided in this part in cases where the total of any payments and benefits extended under Chapters VII and XIV of this title does not exceed:

(a) $5,000 for cases subject to § 718.8; or

(b) $25,000 for cases subject to § 718.9.

§ 718.6 Signature requirements and time limitations.

(a) When a program authorized by this chapter and parts 1410 and 1412 of this title requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such FSA or CCC documents on behalf of the other spouse, unless such other spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to the county FSA office which administers FSA and CCC programs with respect to each farm.

(b) Except a husband or wife may not sign a document on behalf of a spouse with respect to:

(1) Program documents required to be executed in accordance with part 3 of this title and part 704 of this chapter;

(2) Easements entered into under part 1410 of this title;

(3) Form FSA–211, Power of Attorney and Form FSA–211–1, Power of Attorney for Husband and Wife; and

(4) Such other program documents as determined by FSA or CCC.

(c) Whenever the final date prescribed in any of the regulations in this title for the performance of any act falls on a Saturday, Sunday, national holiday, State holiday on which the office of the county or State Farm Service Agency committee having primary cognizance of the action required to be taken is closed, or any other day on which the cognizant office is not open for the transaction of business during normal working hours, the time for taking required action shall be extended to the close of business on the next working day. Or in case the action required to be taken may be performed by mailing, the action shall be considered to be taken within the prescribed period if the mailing is postmarked by midnight of such next working day. Where the action required to be taken is within a prescribed number of days after the mailing of notice, the day of mailing shall be excluded in computing such period of time.

§ 718.7 Failure to fully comply.

In any case in which the failure of a producer to fully comply with the terms and conditions of a program authorized by this chapter precludes the making of price support to such producer, the Deputy Administrator for Farm Programs may authorize the making of such price support in such amounts as determined to be equitable in relation to the seriousness of the failure if the regulations of this title authorizing the program specifically authorize such action. The provisions of this part shall only be applicable to producers who are determined to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

§ 718.8 Incomplete performance based upon action or advice of an authorized representative of the Secretary.

(a) Notwithstanding any other provision of the law, performance rendered in good faith based upon action of, or information provided by, any authorized representative of a County or State Farm Service Agency Committee, may be accepted by the Administrator, FSA (Executive Vice President, CCC), the Associate Administrator, FSA (Vice President,

CCC), or the Deputy Administrator for Farm Programs, FSA (Vice President, CCC), as meeting the requirements of the applicable program, and benefits may be extended or payments may be made therefor in accordance with such action or advice to the extent it is deemed desirable in order to provide fair and equitable treatment.

(b) The provisions of this section shall be applicable only if a producer relied upon the action of a county or State committee or an authorized representative of such committee or took action based on information provided by such representative. The authority provided in this part does not extend to cases where the producer knew or had sufficient reason to know that the action or advice of the committee or its authorized representative upon which they relied was improper or erroneous, or where the producer acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices, or advice.

§ 718.9 Finality rule.

(a) A determination by a State or county committee made on or after October 13, 1994, becomes final and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed unless one of the following conditions exist:

(1) The participant has requested an administrative review of the determination in accordance with the provisions of part 780 of this chapter;

(2) The determination was based on misrepresentation, false statement, fraud, or willful misconduct by or on behalf of the participant;

(3) The determination was modified by the Administrator, FSA, or the Executive Vice President, CCC; or

(4) The participant had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, it shall only be effective through the year in which the error was found and communicated to the participant.

§ 718.10 Rule of fractions.

(a) Rounding of fractions shall be done after the completion of the entire computation which is being made. In making mathematical determinations all computations shall be carried to two decimal places beyond the required number of decimal places as specified in the regulations governing each program. In rounding, fractional digits of 49 or less beyond the required number of decimal places shall be dropped; if the fractional digits beyond the required number of decimal places are 50 or more, the figure sat the last required decimal place shall be increased by ''1'' as follows:

Required decimal	Computation	Result
Whole numbers.	6.49 (or less)	6
	6.50 (or more).	7
Tenths	7.649 (or less).	7.6
	7.650 (or more).	7.7
Hundredths ...	8.8449 (or less).	8.84
	8.8450 (or more).	8.85
Thousandths	9.63449 (or less).	9.634
	9.63450 (or more).	9.635
10 thousandths.	10.993149 (or less).	10.9931
	10.993150 (or more).	10.9932

(b) The acreage of each field or subdivision computed for tobacco and CCC disaster assistance programs shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre. The acreage of each field or subdivision computed for crops, except tobacco, shall be recorded in acres and tenths of an acre, rounding all hundredths of an acre to the nearest tenth.

§ 718.11 Denial of Benefits.

(a) For the purposes of this section, a person means an individual.

(b) Any person convicted under Federal or State law of planting cultivating, growing, producing, harvesting, or storing a controlled substance as defined in 21 CFR part 1308 shall be ineligible for:

(1) With respect to any commodity produced by such person that crop year, and during the four succeeding crop years any price support loan available in accordance with parts 1446 and 1464 of this title;

(2) Any payment made under any Act; and

(3) A payment made under the Commodity Credit Corporation Charter Act (15 U.S.C. 714b and 714c) for the storage of an agricultural commodity that is produced during such crop year, or any of the four succeeding crop years by such person.

(c) If any person denied benefits under this part is a beneficiary of a trust, benefits for which the trust is eligible shall be reduced, for the appropriate period, by a percentage equal to the total interest of the beneficiary in the trust.

§ 718.12 Furnishing maps.

The cost of furnishing reproductions of photographs, mosaics and maps is free upon request to the farm operator, owner, Federal Crop Insurance Corporation (FCIC) and reinsured companies, Natural Resources Conservation Service (NRCS) and other Federal or State Agencies performing their official duties in making FSA and related program determinations. To all others, reproductions shall be made available at the rate FSA determines will cover the cost of making such items available.

Subpart B—Determination Of Acreage and Compliance

§ 718.101 Measurements.

(a) Measurement services include, but are not limited to, measuring land and crop areas, quantities of farm-stored commodities, and appraising the yields of crops when required for program administration purposes. The county committee shall provide measurement service if the producer requests such service and pays the cost, except that service shall not be provided to determine total acreage of a crop when the request is made:

(1) After the established final reporting date for the applicable crop except as provided in § 718.103;.

(2) After the farm operator has furnished the county office production evidence when required for program administration purposes except as provided in this subpart; or

(3) In connection with a late-filed report of acreage, unless there is evidence of the existence and use made of the crop, the lack of the crop or a disaster condition affecting the crop.

(b) The acreage requested to be measured by staking and referencing shall not exceed the effective farm allotment for marketing quota crops or acreage of a crop that is limited to a specific number of acres to meet any program requirement.

(c) When a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage shall be guaranteed to be correct and used for all program purposes for the current year even though an error is later discovered in the measurement thereof, if the producer has taken action with an economic significance based on the measurement service, and the entire crop required for the farm was

measured. If the producer has not taken action with an economic significance based on the measurement service, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

(d) When a measurement service reveals acreage in excess of the permitted acreage by more than the allowable tolerance, the producer must destroy the excess acreage and pay for an authorized employee of FSA to verify destruction, in order to keep the measurement service guarantee.

§ 718.102 Acreage reports.

(a) In order to be eligible for benefits, participants in the programs specified in paragraph (b)(1) through (3) of this section and those who are subject to the regulations cited in paragraph (b)(4) and (5) of this section must submit accurate information as required by these provisions.

(b)(1) Participants in the program authorized by part 1412 of this title must report the acreage of fruits and vegetables planted for harvest on a farm enrolled in such program;

(2) Participants in the programs authorized by parts 1421 and 1427 of this title must report the acreage planted to a commodity for harvest for which a marketing assistance loan or loan deficiency payment is requested; and

(3) Participants in the programs authorized by parts 704 and 1410 of this title must report the use of the land enrolled in such programs;

(4) Participants in the programs authorized by parts 723 and 1464 of this title (except burley tobacco producers) must report the acreage planted to tobacco by kind (except burley tobacco) on all farms that have an effective allotment or quota greater than zero; and

(5) Participants in the programs authorized by parts 729 and 1446 of this title must report the acreage planted to peanuts by type.

(c) The reports required under paragraph (a) of this section shall be timely filed by the farm operator, farm owner, or a duly authorized representative with the county committee by the final reporting date applicable to the crop as established by the county committee and State committee.

(d) Peanut producers shall provide the county office evidence of disposition of any peanuts that are kept on the farm, including:

(1) Type and quantity for use for seed on any farm in which the producer has an interest; and

(2) Type, quantity, names, and addresses of purchases for peanuts sold or given to others.

(e) Peanut producers shall provide the county office information for acquisition of seed peanuts from other sources, including:

(1) Name and address of person who sold or gave producer the peanuts;

(2) Type, farmer's stock or shelled basis, and quantity; and

(3) Acquisition date.

§ 718.103 Late filed reports.

(a) A farm operator's report may be accepted after the established date for reporting if evidence is still available for inspection which may be used to make a determination with respect to the existence and use made of the crop, the lack of the crop or a disaster condition affecting the crop.

(b) The farm operator shall pay the cost of a farm visit by an authorized FSA employee unless the County Committee has determined that failure to report in a timely manner was beyond the producer's control.

§ 718.104 Revised reports.

(a) The farm operator may revise a report of acreage with respect to 1996 and subsequent years to change the acreage reported if the county committee determines that the revision does not have an adverse impact on the program and the acreage has not already been determined by FSA.

(b) Revised reports shall be filed and accepted:

(1) At any time for all crops if evidence exists for inspection and determination of the existence and use made of the crop, the lack of the crop, or a disaster condition affecting the crop; and

(2) If the requirements of paragraph (a) have been met and the producer was in compliance with all other program requirements by the applicable established crop reporting date.

§ 718.105 Tolerances, variances, and adjustments for tobacco.

(a) Tolerance or variance for tobacco is the amount by which the determined acreage may differ from the reported acreage or allotment and still be considered in compliance with program requirements.

(b) Tolerance rules apply to those fields for which a staking and referencing was performed but such acreage was not planted according to those measurements or when a measurement service is not requested for acreage destroyed to meet program requirements. Tolerance rules do not apply to:

(1) Official fields when the entire field is devoted to one crop;

(2) Those fields for which staking and referencing was performed and such acreage was planted according to those measurements; or

(3) The adjusted acreage for farms using measurement after planting which have a determined acreage greater than the marketing quota crop allotment.

(c) An administrative variance is applicable to all marketing quota crop acreages. Marketing quota crop acreages as determined in accordance with this part shall be deemed in compliance with the effective farm allotment or program requirement when the determined acreage does not exceed the effective farm allotment by more than an administrative variance determined as follows:

(1) For all kinds of tobacco subject to marketing quotas, except dark air-cured and fire-cured the larger of 0.1 acre or 2 percent of the allotment; and

(2) For dark air-cured and fire-cured tobacco, an acreage based on the effective acreage allotment as provided in the table as follows:

Effective acreage allotment is within this range	Administrative variance
0.01 to 0.99	0.01
1.00 to 1.49	0.02
1.50 to 1.99	0.03
2.00 to 2.49	0.04
2.50 to 2.99	0.05
3.00 to 3.49	0.06
3.50 to 3.99	0.07
4.00 to 4.49	0.08
4.50 and up	0.09

(d) A tolerance applies to tobacco other than flue-cured or burley, if the determined acreage exceeds the allotment by more than the administrative variance but by not more than the tolerance. Such excess acreage of tobacco may be adjusted to the effective farm acreage allotment to avoid marketing quota penalties or receive price support.

§ 718.106 Acreages.

(a) If an acreage has been established by a representative of FSA for an area delineated on an aerial photograph, such acreage will be recognized by the county committee as the official acreage for the area until such time as the boundaries of such area are changed. When boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until the boundaries are verified by an authorized representative of FSA.

(b) Measurements of any row crop shall extend beyond the planted area by the larger of 15 inches or one-half the distance between the rows.

(c) The entire acreage of a field or subdivision of a field devoted to a crop shall be considered as devoted to the crop subject to any allowable deduction or adjustment credit except as otherwise provided in this part.

§ 718.107 Skip rows and strip crops.

(a) To be considered under the skip row provisions of this section the field must be planted in a uniform planting pattern and the number of rows planted between skips cannot exceed 36 rows. If more than one pattern is used within a field, the area planted to each pattern will be considered a subdivision.

(b) The entire acreage of the field or subdivision shall be considered as devoted to the crop where the crop is planted in strips of two or more rows and the strips of idle land are less than 64 inches wide, except where cotton is planted in skip row patterns:

(1) If the distance between the rows is 30 inches the strips of the idle land are less than 60 inches wide; or

(2) If the distance between the rows is 32 inches or wider and the strips of idle land are at least 60 inches but less than 64 inches, the producer has the option to consider the crop as either solid planted or skip row if the producer has a history of planting 32-inch or wider rows.

(c) The county committee shall determine if the producer has a history of 32-inch or wider rows by verifying that cotton acreage has been planted in 32-inch or wider rows in past years and reported on the acreage report, or reported to other State or Federal Agencies.

(d) If the strips of idle land are too wide to be classified as solid planted in accordance with paragraph (b) of this section the acreage of the strips planted to the crop, including one-half the distance between the rows of the crop but not less than 15 inches beyond the outside rows of the crop in each strip, shall be considered as devoted to the crop.

(e) When one crop is alternating with another crop, the entire acreage of the field or subdivision shall be considered as devoted to the crop being measured where such crop is planted in strips of one or more rows and the strips of the other crop are less than 64 inches.

(f) If strips of the alternating crop are too wide to be considered solid planted in accordance with paragraph (b) of this section and if the alternating crop:

(1) Has substantially the same growing season as the crop being measured, only the acreage planted to the crop being measured, including the smaller of one-half the distance between the strips of the crop being measured or 30 inches shall be considered as being devoted to the crop being measured; or

(2) Does not have substantially the same growing season as the crop being measured, then the acreage of the crop being measured shall be determined in accordance with paragraph (b) or (c) of this section.

(g) When the crops are planted in single wide rows, the entire acreage of the field or subdivision shall be considered as devoted to the crop where the distance between the rows of such crop is less than 64 inches. If the distance between the rows of the crop is at least 64 inches, only 64 inches in width for each row shall be considered as being devoted to the crop.

§ 718.108 Deductions.

(a) Any contiguous area which is not devoted to the crop being measured and which is not part of a skip-row pattern under § 718.107 shall be deducted from the acreage of the crop if such area meets the following minimum national standards or requirements:

(1) A minimum width of 30 inches;

(2) For tobacco, three-hundredths acre, except that turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, noncropland, and subdivision boundaries each of which is at least 30 inches in width may be combined to meet the 0.03-acre minimum requirement; or

(3) For all other crops and land uses, one-tenth acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, noncropland, and subdivision boundaries each of which is at least 30 inches in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State in accordance with this subpart.

(b) If the area not devoted to the crop is located within the planted area, the part of any perimeter area that is more than 33 links in width will be considered to be an internal deduction if the standard deduction is used.

(c) A standard deduction of 3 percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas.

§ 718.109 Adjustments.

(a) The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) may adjust an acreage of the crop in order to avoid a marketing quota penalty if such person:

(1) Notifies the county committee of such election within 15 calendar days after the date of mailing of notice of excess acreage by the county committee; and

(2) Pays the cost of a farm visit to determine the adjusted acreage prior to the date the farm visit is made.

(b) The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of FSA and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

§ 718.110 Notice of measured acreage.

Written notice of measured acreage shall be on Form FSA–468, Notice of Determined Acreage, when mailed to the farm operator and shall constitute notice to all interested producers on the farm.

§ 718.111 Redeterminations.

(a) A redetermination of crop acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Such redeterminations may also be initiated by a producer who has an interest in the farm upon filing a request within 15 calendar days after the date of the notice furnished the farm operator in accordance with § 718.109 or § 718.110 or within 5 calendar days after the initial appraisal of the yield of a crop or before any of the farm-stored production is removed from storage and upon payment of the cost of making such redetermination. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. Such redetermination shall be used in lieu of any prior determination.

(b) The county committee shall refund the payment of the cost for a redetermination when, because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

(i) Five percent or 5 pounds for cotton;

(ii) Five percent or 1 bushel for wheat, barley, oats, and rye; or

(iii) Five percent or 2 bushels for corn and grain sorghum; or

(2) The farm stored production is changed by at least the smaller of 3 percent or 600 bushels; or

(3) The acreage of the crop is:

(i) Changed by at least the larger of 3 percent or 0.5 acre; or

(ii) Considered to be within program requirements.

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Acreages

§ 718.201 Farm constitution.

(a) Land which has been properly constituted under prior regulations shall remain so constituted until a reconstitution is required under paragraph (c) of this section. The constitution and identification of land as a farm for the first time and the subsequent reconstitution of a farm made hereafter, shall include all land operated by one person as a single farming unit except that it shall not include:

(1) After August 1, 1996, land subject to a production flexibility contract with land not subject to a production flexibility contract;

(2) Land under separate ownership unless the owners agree in writing;

(3) Land under a lease agreement of less than 1 year duration;

(4) Land in different counties when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, or owner. However, this paragraph shall not apply if:

(i) All of the land is owned by one person and operated by one person and all such land is contiguous;

(ii) Two or more tracts are located in counties that are contiguous in the same State and are owned by the same person if:

(A) A burley tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in § 718.202; or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

(5) Federally owned land;

(6) State-owned wildlife land unless the former owner has possession of the land under a leasing agreement;

(7) Land constituting a farm which is declared ineligible to be enrolled in a program under the regulations governing the program;

(8) For land subject to production flexibility contracts, land located in counties that are not contiguous. However, this subparagraph shall not apply if:

(i) Counties are divided by a river;

(ii) Counties do not touch because of a correction line adjustment; or

(iii) The land is within 20 miles, by road, of other land that will be a part of the farming unit; and

(9) With respect to peanut poundage quotas, land across:

(i) County lines when the quotas established for the land involved cannot be transferred; or

(ii) State lines.

(b)(1) If all land on the farm is physically located in one county, the farm records shall be administratively located in such county. If there is no FSA office in the county or the county offices have been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(2) If the land on the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (b) except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease;

(2) The farm was not properly constituted under the applicable regulations in effect at the time of the last constitution or reconstitution;

(3) An owner requests in writing that the owner's land no longer be included in a farm which is composed of tracts under separate ownership;

(4) The county committee determines that the farm was reconstituted on the basis of false information furnished by the owner or farm operator;

(5) The county committee determines that the tracts of land included in a farm are not being operated as a single farming unit;

(6) An owner of a farm, constituted as a single farming unit prior to 1978, which is comprised of land located in two or more counties for which there is a quota or allotment established for such farm and such quota or allotment is subject to lease and transfer restrictions across county lines, requests in writing that the farm be reconstituted by dividing the tracts. The resulting farms shall be administratively serviced by the county office serving the county in which the land is geographically located; or

(7) Land is sold for or devoted to nonagricultural commercial or industrial uses; however, a reconstitution is not required and allotments, quotas and acreages may remain with the farm if either of the following apply:

(i) The land is already devoted to residential, recreational, industrial or commercial buildings; or

(ii) The owner would qualify to use the landowner designation method of division in accordance with § 718.205 or the allotments and quotas can be transferred by sale or owner in accordance with this part and parts 723 or 729 of this chapter and the owner of the parent farm and the purchaser file a signed written memorandum of understanding before Form FSA–476 or Form MQ–24 is issued, stating that the land will be devoted immediately or within 3 years to:

(1) Nonagricultural commercial uses; or

(2) Recreational, residential, industrial or non-farm commercial uses.

(d) Notwithstanding the provisions of paragraphs (c)(1) through (c)(7), a reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(1) Circumvent the provisions of part 12 of this title; or

(2) Circumvent any other chapter of this title.

§ 718.202 Determining the land constituting a farm.

(a) In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. For purposes of this part, the following rules shall be applicable to determining what land is to be included in a farm.

(b) A minor shall be considered to be the same owner or operator as the parent or court-appointed guardian (or other person responsible for the minor child) unless:

(1) The minor child is a producer on a farm;

(2) Neither the minor's parents nor guardian has any interest in the minor's farm or production from the farm;

(3) The minor establishes and maintains a separate household from the parent or guardian;

(4) Personally carries out the farming activities in the operation; and

(5) Maintains a separate accounting for the farming operation.

(c) Notwithstanding paragraph (b) of this section, a minor shall not be considered to be the same owner or operator as the parent or court-appointed guardian if the minor's interest in the farming operation results from being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(d) A life estate tenant shall be considered to be the owner of the property for their life.

(e) A trust shall be considered to be an owner with the beneficiary of the trust; except a trust can be considered a separate owner or operator from the beneficiary, if the trust:

(1) Has a separate and distinct interest in the land or crop involved;

(2) Exercises separate responsibility for the separate and distinct interest; and

(3) Maintains funds and accounts separate from that of any other individual or entity for the interest.

§ 718.203 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator with the concurrence of the owner of the farm. Any request for a farm reconstitution shall be filed with the county committee.

§ 718.204 Reconstitution of allotments, quotas, and acreages.

(a) Farms shall be reconstituted in accordance with this subpart when it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred.

(b) Reconstitutions of farms subject to a production flexibility contract in accordance with part 1412 of this title will be effective for the current year if initiated on or before July 1 of the fiscal year.

(c) For tobacco and peanut farms, a reconstitution will be effective for the current year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (b) and (c) of this section, a reconstitution may be effective for the current year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is to avoid the statutes and regulations governing commodity programs found in this title.

§ 718.205 Rules for determining farms, allotments, quotas, and acreages when reconstitution is made by division.

(a) The methods for dividing farms, allotments, quotas, and acreages in order of precedence, when applicable, are estate, designation by landowner, contribution, agricultural use, cropland, and history. The proper method shall be determined on a crop by crop basis.

(b)(1) The estate method is the proration of allotments, quotas, and acreages for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and acreages for that tract shall be determined by using one of the methods provided in paragraphs (c) through (g) of this section.

(2) Allotments, quotas, and acreages shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(3) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, and acreages, such allotments, quotas, and acreages shall be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and acreages have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(4) If allotments, quotas, and acreages are not apportioned in accordance with the provisions of paragraph (b)(2) or (3) of this section, the allotments, quotas, and acreages shall be divided pursuant to paragraphs (d) through (g) of this section, as applicable.

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and acreages, including historical acreage that has been doublecropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(4) of this section. In the case of land subject to a Wetlands Reserve Program easement or Emergency Wetlands Reserve Program easement, the parent farm shall retain the allotments, quotas, and acreages.

(2) If the county committee determines that allotments, quotas, and acreages cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(4) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(4) of this section. If the owner does not furnish a revised designation of allotments, quotas, and acreages within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(4) of this section, the county committee will prorate the allotments, quotas, and acreages in accordance with paragraphs (d) through (g) of this section.

(3) If a parent farm is composed of tracts, under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (d) through (g) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) A landowner may designate, as provided in this paragraph, the manner in which allotments, quotas, and acreages are divided.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before the farm is reconstituted and before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and acreage that shall be permanently reduced when the sum of the allotments, quotas, and acreages exceeds the cropland for the farm.

(ii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments or quotas. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm and the allotments or

quotas, shall be assigned to that part in accordance with paragraphs (d) through (g) of this section. Such apportionment shall be made prior to any designation of allotments and quotas, with respect to the part which has been owned for 3 years or more.

(5) The designation by landowner method is not applicable to:

(i) Burley tobacco quotas; or

(ii) Crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(6) The designation by landowner method may be applied at the owner's request to land owned by any Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or acreage has been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the allotments, quotas, and acreages between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(4).

(d) (1) The contribution method is the proration of a parent farm's allotments, quotas, and acreages to each tract as the tract contributed to the allotments, quotas, or acreages at the time of combination and may be used when the provisions of paragraphs (b) and (c) of this section do not apply. The contribution method shall be used to divide allotments and quotas for a farm that resulted from a combination which became effective during the 6-year period before the crop year for which the reconstitution is effective. This method for dividing allotments and quotas shall be used beyond the 6-year period if FSA records are available to show the amount of contribution.

(2) The county committee determines with the concurrence of the State committee or representative thereof, that the use of the contribution method would not result in an equitable distribution of allotments and quotas, considering available land, cultural operations, and changes in type of farming. The contribution method shall not be used in cases involving the division of allotment or quota for any commodity for which there was no allotment or quota established at the time of the combination.

(e) The agricultural use method is the proration of contract acreage to the tracts being separated from the parent farm in the same proportion that the agricultural and related activity land for each tract bears to the agricultural and related activity land for the parent farm. This method of division shall be used if the provisions of paragraphs (b) through (d) of this section do not apply.

(f) (1) The cropland method is the proration of allotments and quotas to the tracts being separated from the parent farm in the same proportion that the cropland for each tract bears to the cropland for the parent farm. This method shall be used if the provisions of paragraphs (b) through (d) of this section do not apply unless the county committee determines that a division by the history method would result in allotments and quotas which are more representative than if the cropland method is used after taking into consideration the operation normally carried out on each tract for the commodities produced on the farm.

(2) The cropland method shall not be used to divide contract acreage.

(g)(1) The history method is the proration of allotments and quotas to the tracts being separated from the farm on the basis of the allotments and quotas determined to be representative of the operations normally carried out on each tract. The county committee may use the history method of dividing allotments and quotas when it:

(i) Determines that this method would result in the proration of allotments and quotas, more representative than the cropland method of division of the operation normally carried out on each tract; and

(ii) Obtains written consent of all owners to use the history method.

(2) Notwithstanding any other provision of this section, the county committee may waive the requirement for written consent of the owners for dividing allotments and quotas if the county committee determines that the use of the cropland method would result in an inequitable division of the parent farm's allotments and quotas and the use of the history method would provide more favorable results for all owners.

(3) The history method shall not be used to divide contract acreage.

(h) (1) Allotments, quotas, and acreages apportioned among the divided tracts pursuant to paragraphs (d), (e), (f) and (g) of this section may be increased or decreased with respect to a tract by as much as 10 percent of the allotment, quota, or acreage determined under such subsections for the parent farm if:

(i) The owners agree in writing; and

(ii) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or acreage with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or acreages established with respect to the other tracts which constitute the farm.

(2) Farm program payment yields calculated for the resulting farms of a division performed according to paragraphs (d) through (g) may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

(i) If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among family members;

(2) By the estate method; and

(3) When no sale or change in ownership of land occurs.

§ 718.206 Rules for determining allotments, quotas, and acreages when reconstitution is made by combination.

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and acreages, with respect to the combined farm or tract, as required by applicable commodity regulations, shall not be greater than the sum of the allotments, quotas, and acreages for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204(a)(3).

§ 718.207 Eminent domain acquisitions.

(a) This section provides a uniform method for reallocating allotments and quotas, with respect to land involved in eminent domain acquisitions. Such allotments and quotas, in accordance with this section, may be pooled for the benefit of the owner who is displaced from the acquired farm by eminent domain acquisition. Such pooling shall be for a 3-year period from the date of displacement or during such other period as the displaced owner may request for the transfer of allotments and quotas, from the pool to other farms owned by such person.

(b) An eminent domain acquisition is a taking of title to land, or the taking of

an impoundment easement to impound water on the land, or the taking of a flowage easement to intermittently flood the land, consummated with respect to land which is, or could be, so taken under the power of eminent domain by a Federal, State, or other agency. Such acquisition may be by court proceedings to condemn the land or by negotiation between the agency and the owner. An acquisition by an agency with respect to land not subject to the agency's power of eminent domain shall not be an eminent domain acquisition for purposes of this section. All land acquired by an agency for the intended project, including surrounding land not needed for the project but acquired as a package acquisition, shall be considered to be in the eminent domain acquisition if the agency expended funds for the package acquisition on the basis of its power of eminent domain.

(c) For purposes of this section, owner means the person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If such person or persons have owned the land for less than such 12-month period, they may, nevertheless, be considered the owner if the State committee determines that such person or persons acquired the land for the purpose of carrying out farming operations and not for the purpose of obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to an eminent domain acquisition under an outstanding contract to an agency or an option by an agency or subject to pending condemnation proceedings. In any case where the current titleholders cannot be considered the owner for the purpose of this section, the State committee shall determine the person or persons who previously had title to the land and who qualify for status as the owner under the criteria in this paragraph.

(d) The owner shall be considered displaced from a farm which is subject to an eminent domain acquisition on the date:

(1) The owner loses possession of the land;

(2) The owner is voluntarily displaced if a binding contract for acquisition has been executed;

(3) The owner, in the case of a flowage easement, determines it is no longer practical to conduct farming operations on the land; or

(4) The owner loses possession of the land as lessee under a lease from the agency or its designee if the lease provided uninterrupted possession to the owner from the date of acquisition to the end of the lease or extensions of the lease.

(e) The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement within 30 days so that allotments and quotas may be pooled in accordance with this section. Failure to so notify the county committee shall result in the loss of the ability of the owner to extend the 3-year period of the pool.

(f) Whenever the county committee determines, by notice from the owner or otherwise, that an owner has been displaced from the farm, the county committee shall establish a pool for the allotments and quotas eligible for pooling under this section for a 3-year period beginning on the date of displacement. Pooled allotments and quotas shall be considered fully planted and, for each year in the pool, shall be established in accordance with applicable commodity regulations.

(g) Pooling is not permitted or required:

(1) If the county committee determines that an agency has authority under its eminent domain powers to acquire a farm for the continued production of an allotment or quota and does so acquire a farm only for such purpose and files a written notice with the county committee of the county in which the farm is located at the time of acquisition designating the allotment and quota to be produced on the farm, there shall be no pooling of such allotment and quota. Such farm allotments and quotas shall be established for the farm in accordance with applicable commodity regulations. For acreages, there shall be no pooling of the acreage under any circumstances if an agency acquires land and retains the land in an agricultural or related activity;

(2) If the displaced owner files written notice with the county committee of an intention to waive the right to have all the allotments and quotas or any part thereof pooled and the county committee determines that the displaced owner has not been coerced to waive such right, the allotments and quotas shall be retained on the agency acquired land;

(3) If an agency acquires part of a farm for non-farming purposes and the cropland on the land so acquired represents less than 15 percent of the total cropland on the farm, the allotments and quotas shall be retained on the portion of the farm not acquired by the agency and shall not be pooled;

(4) If an agency acquires part of a farm for non-farming purposes and the cropland on the land so acquired represents 15 percent or more of the total cropland on a farm, the allotments and quotas attributable to the acquired land shall be retained on the portion of the farm not acquired by the agency if the owner files a written request with the county committee for such retention. The amount of an allotment and quota which may be retained on the farm cannot exceed the land devoted to an agricultural or related activity. Allotments and quotas which are not retained shall be pooled; or

(5) If, prior to pooling, an owner files a request to transfer the allotments and quotas to other farms in the same county which are owned by such owner, the county committee may approve a direct transfer without the formal establishment of a pool. Such transfer shall be subject to the requirements of paragraph (j) of this section. This paragraph shall govern the release and reapportionment of pooled allotments and quotas notwithstanding other provisions of applicable commodity regulations.

(h) Pooled allotments and quotas may be released on an annual basis by the owner to a county committee during any year for which allotments and quotas are pooled and not otherwise transferred from the pool. The county committee may reapportion the released allotments and quotas to other farms in the same county that have allotments or quotas for the same commodity. Pooled allotments and quotas shall not be released on a permanent basis or surrendered after release to the State committee for reapportionment in other counties. Reapportionment shall be on the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices, and other physical factors affecting the production of the commodity. Pooled allotments and quotas which are released shall be considered to have been fully planted in the pool and not on the farm to which such allotments and quotas are reapportioned.

(i) Pooled allotments and quotas that may be transferred on a permanent or temporary basis by sale, lease, or by owner designation may be transferred permanently from the pool by the owner or temporarily for the duration of the pooled allotment or quota, subject to the terms and conditions for such transfers in the applicable commodity regulations. The transfer of tobacco acreage allotment or marketing quota shall be approved acre for acre.

(j) (1) The displaced owners may request a transfer of all or part of the pooled allotments and quotas to any other farm in the United States which is owned by the displaced owner, but only if there are farms in the receiving county with allotments and quotas, for the particular commodity or, if there are no such farms, the county committee determines that farms in the receiving county are suited for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committee mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) The displaced owner shall file with the receiving county committee written application for transfer of an allotment and quota from the pool within 3 years after the date of displacement. The application shall contain a certification from the owner that no agreement has been made with any person for the purpose of obtaining an allotment or quota from the pool for a person other than for the displaced owner. The owner shall attach to the application all pertinent documents pertaining to the current ownership or purchase of land and any leasing arrangements, such as the deed of trust or mortgage, a warranty deed, a note, sales agreement, and lease.

(3) The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer. Such personal appearance requirement may be waived if the receiving county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under paragraph (j)(5) of this section.

(4) The transfer from the pool will be approved by the receiving county committee only if the county committee determines that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations. The elements of such an acquisition shall include, but are not limited to, the following:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the displaced owner was the operator of the acquired farm at the date of displacement, such owner must personally operate and be the operator of the receiving farm for the first year that the allotment and quota is transferred;

(iii) If the displaced owner was not the operator of the acquired farm at the date of displacement and was not a producer on that farm because the leasing or rental agreement provided for cash, fixed rent, or standing rent payment, such owner shall not be required to operate personally and be the operator of the receiving farm, but at least 75 percent of the allotments for the receiving farm must be planted on the receiving farm during the first year of the transfer. With respect to a commodity for which a quota is applicable but for which there is no acreage allotment, an acreage which is equal to the result of dividing the quota transferred to the receiving farms by the receiving farm's yield, multiplied by 75 percent must be planted during the first year of the transfer;

(iv) If the displaced owner was not the operator of the acquired farm at the date of displacement but was a producer on that farm at the date of displacement as the result of having received a share of the crops produced on the acquired farm, such displaced owner shall not be required to be the operator of the receiving farm but must be a producer on the receiving farm during the first year that an allotment or quota is transferred;

(v) The contractual arrangements between the displaced owner and the seller of the receiving farm must not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller. The seller or a person designated by or subject to the control of the seller may not lease the receiving farm for the first year the allotment or quota is transferred; and

(vi) The contractual arrangements under which the receiving farm was purchased or leased must be customary in the community where the receiving farm is located with respect to purchase price and timing and amount of purchase or rental payments.

(5) The approval by the receiving county committee of a transfer from the pool under this paragraph shall be effective upon concurrence by the State committee of the State where the receiving farm is located (the receiving State committee). Notwithstanding any other provision of this section, the receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that:

(i) The eligibility requirements of paragraph (j)(4) (ii), (iii) and (iv) of this section cannot be met without substantial hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which an allotment or quota is to be transferred; or

(ii) The owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations for the displaced owner, even if the farm is leased to the seller of the farm for the first year for which the allotment or quota is transferred.

(6) Upon completion of all necessary approvals under this paragraph, the receiving county committee shall issue an appropriate notice of allotment and quota under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors affecting the production of the commodity. For purposes of determining the amount of the allotment and quota available for transfer, the receiving county committee shall consider the receiving tract as a separate ownership. The acreage transferred from the pool shall not exceed the allotments and quotas, most recently established for the acquired farm placed in the pool. When all or a part of the allotment and quota placed in the pool is transferred and used to establish or increase the allotment and quota for other farms owned or purchased by the owner, all of the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future allotments and quotas to have been planted on the receiving farm for which an allotment and quota, are established or increased under this section. If only a part of the available allotment and quota is transferred from the pool, the remaining part of the allotment and quota, shall remain in the pool for transfer to other farms of the owner until all such

allotments and quotas have been transferred or until the period of eligibility for establishing or increasing allotments and quotas under this section has expired.

(7) If any allotment or quota is transferred under this section and it is later determined by the receiving county or State committee, or by the Deputy Administrator, that the transfer was obtained by misrepresentation by or on behalf of the owner, or that the conditions of paragraph (j)(4) of this section are not met, the allotment and quota for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the allotment or quota transferred from the pool. If the time period for the transfer of the allotment or quota from the pool has not expired, the amount of allotment or quota initially transferred from the pool shall be returned to the pool after the period of time has expired in which the displaced owner could exercise the right of administrative review. Any cancellation of the transfer of an allotment or quota by the receiving county committee shall be subject to approval by the receiving State committee. The receiving county committee shall issue a notice of any marketing quota and penalty as may be required in accordance with applicable commodity regulations.

(8) If the displaced owner files a request for transfer of pooled allotments or quotas, within the prescribed period for filing such request, but the request for transfer is filed during a year in which all or a part of the pooled allotments or quotas were released to the transferring county committee pursuant to paragraph (h), the application for transfer will be processed in the usual manner but the amount of the commodity released shall not be effective on the receiving farm until the succeeding year. When a request for transfer of pooled allotment or quota involves a transfer from one State to another, the receiving State committee shall obtain information from the transferring State committee as to whether any part of the allotment or quota for which the transfer is requested has been released to the transferring county committee for the current year.

(k)(1) When the displaced owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date of the displacement of the owner from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g) (3) and (4) of this section.

(3) If a portion of a farm is acquired by an agency and the owner is displaced therefrom, the acquired portion shall be constituted as a separate farm on the date of displacement unless the allotments and quotas are retained on the portion not acquired as provided in paragraphs (g) (3) and (4) of this section, in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(l)(1) The displaced owner may file with the county committee a written designation of beneficiary of the rights in the allotments and quotas attributable to the acquired land in the event of the death of the displaced owner, and may revise such designation from time to time. The beneficiary of a deceased owner may exercise the right to continue a lease or negotiate a lease with the agency or its designee, the regular transfer rights with respect to farms owned by such beneficiary, and the release, sale, lease, and owner transfer rights under this section.

(2) If the displaced owner does not file a designation of beneficiary under paragraph (l)(1) and the displaced owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with the rights provided under paragraph (l)(1) of this section:

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship; and

(ii) The persons who succeed to the deceased displaced owner's interest under a will or by intestate succession. However, in the case of intestate succession, the person shall be limited to the surviving spouse, parent, sibling or child of the deceased displaced owner. In the settlement of the estate of the deceased displaced owner, the heirs may file a written agreement with the county committee for the division of the deceased displaced owner's rights under this section.

(m)(1) No transfer from the pool under paragraph (h), (i), or (j) of this section shall be approved if there remains any unpaid marketing quota penalty due with respect to the marketing of the commodity from the acquired farm by the displaced owner, or if any of the commodity produced on the agency acquired farm has not been accounted for as required under applicable commodity regulations.

(2) If an allotment or quota for an acquired farm next established after the data of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm, or as the result of a false acreage report, the allotment or quota shall be reduced in the pool in accordance with the applicable commodity regulations.

§ 718.208 Exempting federal prison farms and Federal wildlife refuges.

A marketing penalty shall not be assessed with respect to any commodity which is produced on a Federal prison farm or Federal wildlife refuge. This exception does not apply to penalties incurred by an individual who has a separate interest in a crop which is subject to marketing quotas and was produced on a Federal prison farm or Federal wildlife refuge.

§ 718.209 Transfer of allotments and quotas—State public lands.

(a) Transfers of allotments and quotas between farms in the same county may be permitted where both farms are lands owned by the State.

(b) An application requesting the transfer of one or more of the allotments and quotas on a farm entirely comprised of lands owned by a State shall be filed with the county committee by the State. The application shall identify the farms as being within the same county, show that each farm is entirely comprised of lands owned by the State, and list the allotments and quotas requested to be transferred. Additional information with respect to the present operations on the farms, including all leasing arrangements, shall also be set forth in the application.

(c) The State committee shall establish the closing date for filing applications under paragraph (b) of this section for each year which shall be no later than the general planting date in the county for the commodity involved in the transfer.

(d)(1) Each transfer of an allotment and quota under this section shall be adjusted for differences in farm productivity if the yield projected for the year the transfer is to take effect for the farm to which transfer is made exceeds by more than ten percent the yield projected for the year the transfer is to take effect for the farm from which transfer is made. The county committee shall determine the amount of the allotment and quota to be transferred where a productivity adjustment is required to be made by dividing:

(i) The product of the yield for the farm from which the transfer is made and the acreage to be transferred from such farm, by

(ii) The yield for the farm to which the transfer is made.

(2) Acreage for the farm receiving the allotment or quota shall be adjusted by

the same percentage as the allotment or quota being transferred is adjusted. The amount of the allotment and quota and related acreage transferred from the farm from which the transfer is made shall be the full amount, but the amount of all allotment or quota and related acreage for the farm to which the transfer is made shall be the adjusted amount.

(e) The amount of allotment and quota on a farm after a transfer under this section is made shall not exceed the average amount of allotment or quota of at least three farms with acreage of cropland similar to the farm receiving the transfer in the community having the applicable allotment acreage and quota on these farms.

(f) Each transfer of any allotment and quota shall be subject to the condition that an acreage equal to the allotment and quota transferred, before any productivity adjustment, shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made. The acreage to be devoted to and maintained in permanent vegetative cover with respect to quota crops shall be determined by dividing the quota transferred by the yield of the farm from which the quota is transferred.

(g) Transfer of an allotment and quota under this section shall only be approved if:

(1) The county committee determines that a timely filed application has been received and that the provisions of this section have been met; and

(2) A representative of the State committee also determines that the provisions of this section have been met. If such a transfer is approved, the county committee shall issue revised notices of the allotment or quota for each farm affected by the transfer. If a county committee obtains evidence that the conditions applicable to any transfer under this section have not been met, a report of the facts shall be made to the State committee. If the State committee determines that such conditions have not been met, the transfer will be canceled, and the allotment and quota shall be retransferred to the original farm. Where cancellation and retransfer is required, the county committee shall issue revised notices of the allotment or quota showing the reasons for the cancellation of the transfer.

PART 729—PEANUTS

8. The authority citation for part 729 continues to read as follows:

Authority: 7 U.S.C. Chapters 1301, 1357 *et seq.*, 1372, 1373, 1375; and 7 U.S.C. Chapter 1445c–3.

9. For the reason set out in the preamble, § 729.316 is revised to read as follows:

§ 729.316 Marketing assessments.

(a) Subject to adjustments in accordance with § 729.317, a nonrefundable marketing assessment shall, in the amount provided for in this section, be due on each pound of farmers stock peanuts marketed or considered marketed by a producer, including marketings by pledging peanuts as collateral for a price support loan. The per pound assessment as a percentage of the applicable national average quota or additional peanut loan rate, shall be an amount equal to:

(1) 1.15 percent for the 1996 crop; and

(2) 1.2 percent for the 1997 through 2002 crops.

(b) *Collections and payment of marketing assessments.* The first purchaser of peanuts shall:

(1) Collect from the producer a marketing assessment equal to the quantity of peanuts acquired multiplied by:

(i) In the case of the 1996 crop, a per pound amount equal to .6 percent of the national average loan rate; and

(ii) In the case of each of the 1997 through 2002 crops, a per pound amount equal to .65 percent of the applicable national average loan rate.

(2) In addition to the amount collected under paragraph (1) of this section, pay a marketing assessment in an amount equal to the quantity of peanuts acquired multiplied by .55 percent of the applicable national average loan rate.

(c) *Private marketings.* For all peanuts retained on the farm for seed or other uses or marketed by such producer to any person outside the United States or marketed in private marketings through a retail or wholesale outlet to any person who is not required to register as a handler in accordance with part 1446 of this title, the producer shall pay a marketing assessment equal to the full amount determined by multiplying the per pound amount provided in paragraph (a) of this section by the gross weight of the peanuts if they are uninspected farmers stock peanuts or, if inspected, the net weight of such peanuts. If such peanuts are shelled before they are marketed, the quantity marketed shall be converted to a farmers stock equivalent as consistent with this part, for purposes of determining the amount of assessment that is due.

(d) *Loan collateral peanuts.* With respect to peanuts that are pledged as collateral for a price support loan through an approved warehouse, an assessment shall be:

(1) Determined and paid by multiplying the net weight of such peanuts by the applicable per pound amount provided in paragraph (b)(1) of this section for private sales and deducting the total from the loan value of such peanuts before other deductions may be made for any other reason; and

(2) Further determined and paid by multiplying the net weight of such peanuts, when sold from the price support inventory, by the applicable per pound amount provided in paragraph (b)(2) of this section for private sales and collecting that amount from the person who acquires such peanuts from the applicable association or from the CCC.

(e) *Remittance of marketing assessments.* With respect to marketing assessments as provided in:

(1) Paragraph (b) of this section, such assessments shall be remitted in a manner prescribed by the Deputy Administrator. To avoid a penalty, as prescribed in this section, the marketing assessments due with respect to any lot of peanuts acquired directly from a producer must be remitted during the 15 days that follow the week in which the data from the applicable Form FSA–1007 is due to be transmitted to FSA in accordance with the provisions in part 1446 of this title. For purposes of this section a week shall be the 168 hour period that begins at 12:01 a.m. local time on any Sunday and the postmark on the envelope in which such marketing assessment is remitted may be the basis for determining whether the marketing assessment was remitted timely;

(2) Paragraph (c) of this section, such assessments shall be remitted, within 10 days after the date such peanuts are marketed, and shall be remitted to the county FSA office that serves the county in which the farm is administratively located. Peanuts that are retained on the farm for seed or other use, shall be considered marketed at the time the certification of marketings is filed or due to be filed at the county FSA office, whichever is earlier;

(3) Paragraph (d)(1) of this section, such assessments shall be credited by the association to the appropriate account of the CCC and in accordance with instructions issued by the Executive Vice President, CCC; and

(4) Paragraph (d)(2) of this section, such assessment shall be paid at the time and in the manner prescribed in the applicable:

(i) Sales announcements for sales of farmers stock peanuts by CCC;

(ii) Sales announcement or other similar document issued by the

association for association sales of loan stocks of farmers stock peanuts; and

(iii) Storage contract for farmers stock peanuts purchased by a handler when peanuts are purchased by such handler in accordance with the ''immediate buyback'' provisions set forth in § 1446.309.

(f) *Penalties.* If any person fails to collect, pay or timely remit the assessment required by this section, the person shall be liable in addition to principal and interest, for a penalty determined by multiplying the quantity of peanuts involved by 10 percent of the per pound national average quota support rate for the applicable crop year.

10. § 729.317 is added to subpart C to read as follows:

§ 729.317 Increased marketing assessments.

(a) *Applicability.* If area quota pool losses are not otherwise covered by the offsets prescribed by part 1446 of this title, and the transfer of marketing assessments collected in accordance with provisions of this part, the marketing assessment for quota peanut producers shall be:

(1) Increased by an amount needed by CCC to cover such losses; and

(2) Collected as determined by CCC on all quota peanuts marketed in the next marketing year in the area covered by the quota pool which had the loss.

(b) *Insufficient collections.* If the amount of such increased assessments collected on the marketing of quota peanuts in any year is less than the amount needed to cover the accumulated net pool losses for any crop, there shall be an increased assessment in subsequent years until the amount needed is collected.

(c) *Excess collections.* If the increased amount of assessments, as provided in this section, collected on the marketing of quota peanuts for any year is greater than the amount needed for the purpose for which the collection is made, the excess amount shall be retained to offset any losses which may occur in quota pools within that marketing area in subsequent years.

(d) *Collection procedures.* Unless otherwise specified by CCC, the collection procedures for the increased assessments shall be as provided for in § 729.316 and the assessment rates of § 729.316 shall be increased accordingly.

Parts 719, 720, 790, 791, 793, and 796—[REMOVED]

11. Parts 719, 720, 790, 791, 793, and 796 are removed.

12. Chapter XIV is revised by adding part 1400 to read as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

Subpart A—General Provisions

Sec.

Subpart B—Person Determinations

Subpart C—Actively Engaged in Farming Determinations

Subpart D—Permitted Entities

Subpart E—Cash Rent Tenants

Subpart F—Foreign Persons

Authority: 7 U.S.C. 1308, 1308–1, and 1308–2; 16 U.S.C. 3834.

Subpart A—General Provisions

§ 1400.1 Applicability.

(a) All of the provisions of this part are applicable to the following programs and any other programs as may be provided for in individual program regulations:

(1) The programs authorized by part 1412 of this chapter;

(2) Any program authorized by parts 1421 and 1427 of this chapter under which a gain is realized by a producer from repaying a marketing assistance loan for a commodity at a lower rate than the original loan rate established for the commodity, and any program that authorizes the making of a loan deficiency payment with respect to a commodity;

(3)(i) The program authorized by parts 704 and 1410 of this title with respect to the Conservation Reserve Program (CRP) rental payments made in accordance with a contract entered into on or after August 1, 1988. For contracts entered into before August 1, 1988, in accordance with such contracts, the person may elect to have the provisions of this part apply to such contract by notifying the county committee in writing of such election. Such election shall be irrevocable.

(ii) The regulations set forth at part 795 of this title are applicable to CRP contracts entered into before December 22, 1987, and to CRP contracts entered into on or after such date and before August 1, 1988, if the person has not made the election specified in paragraph (a)(3)(i) of this section.

(iii) This part is not applicable to rental payments made in accordance with a CRP contract if such payments are made to a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program carried out by such State, political subdivision, or agency thereof that has been approved by the Secretary, or a designee of the Secretary.

(iv) With respect to inherited land, this part is not applicable to rental payments made in accordance with a CRP contract if such payments are made to an individual heir who has succeeded to such contract. Such land must have been subject to the CRP contract at the time it is inherited by the individual.

(b) Only the provisions of subparts A and B are applicable to the Agricultural Conservation Program (ACP) authorized under part 701 of this title.

(c) This part shall be applied to the programs specified in paragraph (a)(2) of this section on a crop year basis; and with respect to the programs specified

in paragraphs (a)(1) and (3) and (b) of this section on a fiscal year basis.

(d) This part shall be used to determine whether individuals and entities are to be treated as one person or as separate persons for the purpose of applying the respective payment limitation provisions applicable to the programs specified in this section and to such other programs as may be provided in individual program regulations.

(e) In cases in which more than one provision of this part are applicable, the provision which is most restrictive shall apply.

(f) Payments shall not be subject to the payment limitation provisions if they are made to:

(1) Public schools with respect to land owned by a public school district; or

(2) A State with respect to land owned by a State that is used to maintain a public school.

(g) The following amounts are the limitations on payments per person per applicable period for each payment.

Payment type	Limitation per program year or fiscal year
Production Flexibility Contract	[1] $40,000
Production Flexibility Contract	[2] 50,000
Marketing Loan Gain	[3] 75,000
Loan deficiency	
CRP	50,000
ACP cost-share	3,500
Non-Insured Crop Disaster Assistance Program (NAP)	100,000

[1] Annual payment amount.

[2] Amounts made in accordance with section 113(c) of the Federal Agriculture Improvement and Reform Act of 1996.

[3] The total of marketing loan gains and loan deficiency payments cannot exceed $75,000 per crop year.

§ 1400.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the FSA State and county committees (herein referred to as ''State and county committees,'' respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) The initial ''actively engaged in farming'' and ''person'' determinations shall be made within 60 days after the producer files the required forms and any other supporting documentation needed in making such determinations. If the determination is not made within 60 days, the producer will receive a determination for that program year that reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan that was presented to the county or State committee for such year.

(f) Initial determinations concerning the provisions of this part shall not be made by a county FSA office with respect to any farm operating plan that is for a joint operation with more than five members.

§ 1400.3 Definitions.

(a) The terms defined in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall also be applicable to this part:

Active personal labor. Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops on conserving use and CRP acreages and those physical activities necessary in livestock operations.

Active personal management. Active personal management is personally providing:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Services (whether performed on-site or off-site) reasonably related and necessary to the farming operation, including:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops on conserving use and CRP acreage and activities required in livestock operations;

(ii) Business-related actions, which include discretionary decision making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;

(vii) Acquiring technical information used in the farming operation; and

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Alien. Any person not a citizen or national of the United States.

Lawful Alien. Any person who is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card (Form I–551 or I–151).

(2) [Reserved]

Capital. Capital consists of the funding provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital, in the form of funding, to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity involved in such operation. Capital does not include the value of any labor or management that is contributed to the farming operation or any outlays for land or equipment. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the capital is contributed by a member of the joint operation or an entity, such capital contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation;

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity that has an interest in such farming operation; or

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest; and

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate; and

(2) With respect to a farming operation conducted by a joint operation in which the capital is contributed by such joint operation, such capital contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members;

(B) Such joint operation by any individual, entity, or other joint operation that has an interest in such farming operation; or

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations listed in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

Entity. An entity is a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Equipment. Equipment is the machinery and implements needed by the farming operation to conduct activities of the farming operation, including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conserving cover crops on conserving use and CRP acreages and those needed to conduct livestock operations.

(1) With respect to a farming operation conducted by an individual, entity or joint operation in which the equipment is contributed by a member of the joint operation, such equipment contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity that has an interest in such farming operation; or

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the equipment is contributed by such joint operation, such equipment contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation that has an interest in such farming operation; or

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest; and

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if listed as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such equipment may be leased from any source. If such equipment is leased from another individual or entity with an interest in the farming operation, such equipment must be leased at a fair market value.

Family member. The term family member means an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendant, or sibling, including spouses of those individuals who do not make a significant contribution to the farming operation themselves.

Farming operation. A farming operation is a business enterprise engaged in the production of agricultural products that is operated by an individual, entity, or joint operation and is eligible to receive payments, directly or indirectly, under one or more of the programs specified in § 1400.1. An entity or individual may have more than one farming operation if such individual or entity is a member of one or more joint operations.

Interest in a Farming Operation. An individual, entity or joint operation has an interest in a farming operation if the individual, entity or joint operation:

(1) Owns or rents the land;

(2) Has an interest in the agricultural commodities produced; or

(3) Is a member of a joint operation that either owns or rents the land or has an interest in the agricultural commodities produced.

Irrevocable trust. All trusts shall be considered to be revocable trusts, except a trust may be considered to be an irrevocable trust if it is a trust:

(1) That may not be modified or terminated by the grantor;

(2) In the corpus of which the grantor does not have any future, contingent or remainder interest; and

(3) If established after January 1, 1987, that does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon either the remainder beneficiary achieving at least the age of majority or the death of the grantor or income beneficiary.

Joint operation. A joint operation is a general partnership, joint venture, or other similar business organization.

Land. Land is farmland that meets the specific requirements of the applicable program.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the land is contributed by a member of the joint operation, or an entity, such land contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation;

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity that has an interest in such farming operation; or

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest; and

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate; and

(2) With respect to a farming operation conducted by a joint operation in which the land is contributed by such joint operation, such land contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members;

(B) Such joint operation by any individual, entity, or other joint operation that has an interest in such farming operation; or

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest; and

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, such land must be leased at a fair market value.

Payment. A payment includes:

(1) Payments made in accordance with part 1412 of this chapter;

(2) Loan gains and loan deficiency payments made in accordance with parts 1421 and 1427 of this chapter;

(3) CRP annual rental payments made in accordance with parts 704 of this title and 1410 of this chapter;

(4) ACP cost-share payments made in accordance with part 701 of this title;

(5) Non-Insured Crop Disaster Assistance Program (NAP) payments; and

(6) With respect to other programs, any payments designated in individual program regulations.

Payment, loan, or benefit. A payment, loan, or benefit made in accordance with the 1996 Act, the CCC Charter Act, or Subtitle D of the 1985 Act, which results in a direct expenditure by the CCC or any other agency of the Federal Government, including a payment made in accordance with part 1401 of this title. Such term does not include the establishment of contract acreages, farm program payment yields, acreage allotments, marketing quotas, and similar program provisions.

Permitted entity. A permitted entity is an entity designated annually by an individual that is to receive a payment, loan, or benefit under a program specified in § 1400.1(a).

Person. (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, revocable trust combined with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity, other than an individual or entity that is a member of a joint operation, to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity that is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers shall not be considered a person with respect to the commodities so marketed for producers.

Public school. A public school is a primary, elementary, secondary school, college, or university that is directly administered under the authority of a governmental body or that receives a predominant amount of its financing from public funds.

Sharecropper. An individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

Significant contribution. A significant contribution is the provision of the following to a farming operation by an individual or entity:

(1)(i) With respect to land, capital, or equipment contributed by an individual or entity, a contribution that has a value at least equal to 50 percent of the individual's or entity's commensurate share of:

(A) The total value of the capital necessary to conduct the farming operation;

(B) The total rental value of the land necessary to conduct the farming operation;

(C) The total rental value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by an individual or entity consists of any combination of land, capital, and equipment, such combined contribution must have a value at least equal to 30 percent of the individual's or entity's commensurate share of the total value of the farming operation;

(2) With respect to active personal labor, an amount which is the smaller of:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such individual's or entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities that are critical to the profitability of the farming operation, taking into consideration the individual's or entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution individually meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management that, when viewed together, results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as provided in paragraphs (2) and (3) of this definition.

Substantial amount of active personal labor. Substantial amount of active personal labor means the provision of active personal labor in an amount that is the smaller of:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such individual's or entity's commensurate share in the farming operation.

Substantial beneficial interest. A substantial beneficial interest in an entity is an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests in the entity that are owned by an individual or entity directly or indirectly through such means as ownership of a corporation that owns the entity shall be taken into consideration. In order to ensure that the provisions of this part are not circumvented by an individual or entity, the Deputy Administrator may determine that an ownership interest requirement of less than 10 percent shall be applied to such individual or entity.

Total value of the farming operation. The total value of the farming operation is the total of the costs, excluding the value of active personal labor and active personal management contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

§ 1400.4 Indian tribal ventures.

An individual American Indian who receives payments through other than an Indian tribal venture is required to certify that they will not accrue total payments, including payments made to the Indian tribal venture and to the individual American Indian, in excess of the applicable payment limitation for programs specified in § 1400.1.

§ 1400.5 Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device designed to evade this part or that has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information that affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that a person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of sections 1001, 1001A, or 1001C of the 1985 Act such person shall be ineligible to receive payments under the programs specified in § 1400.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1400.6 Commensurate contributions.

In order to be considered eligible to receive payments under the programs specified in § 1400.1 an individual or entity specified in §§ 1400.202 through 1400.210 must have:

(a) A share of the profits or losses from the farming operation that is commensurate with the individual's or entity's contribution to the operation; and

(b) Contributions to the farming operation that are at risk.

§ 1400.7 Joint and several liability.

If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability that arises therefrom. The provisions of this section shall be applicable in addition to any liability that arises under a criminal or civil statute.

§ 1400.8 Equitable adjustments.

Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary to provide fair and equitable treatment to such individual or entity.

§ 1400.9 Appeals.

(a) Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title. With respect to such appeals, the applicable reviewing authority shall:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal; and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) shall not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved that affects the amount of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan initially presented to the county committee for the year that is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

§ 1400.10 Paperwork Reduction Act assigned number.

The information collection requirements contained in this part have been 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 0560–0096.

Subpart B—Person Determinations

§ 1400.100 Timing for determining status of persons.

(a) Except as otherwise set forth in this part, for the 1996 program or fiscal year, the status of an individual or entity on July 12, 1996, shall be the basis on which determinations are made in accordance with this part. Except as otherwise set forth in this part, for 1997 and subsequent years, the status of an individual or entity on April 1 of the applicable program or fiscal year, shall

be the basis on which determinations are made in accordance with this part.

(b) Actions taken by an individual or entity after the applicable status date set forth in paragraph (a) of this section, but on or before the final harvest date of the last contract commodity in the area, as determined by the Deputy Administrator, shall not be used to determine whether there has been an increase in the number of persons for the applicable program or fiscal year. Actions taken by a person after the status date set forth in paragraph (a) of this section, but on or before the harvest of the last contract commodity in the area, shall be used to determine whether there has been a decrease in the number of persons for the applicable program or fiscal year.

§ 1400.101 Limited partnerships, limited liability partnerships, limited liability companies, corporations and other similar entities.

(a) A limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be considered to be a person separate from an individual partner, stockholder, or member except that a limited partnership, limited liability partnership, limited liability corporation, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, limited liability partnership, limited liability corporation, corporation, or other similar entity is owned by an individual (including the interest owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) or by an entity shall not be considered as a separate person from such individual or entity.

(b) If the same two or more individuals or entities own more than 50 percent of the interest in each of two or more limited partnerships, corporations, or other similar entities engaged in farming, all such limited partnerships, limited liability partnership, limited liability company, corporations, or other similar entities shall be considered to be one person.

(c) The percentage share of the interest in a limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity that is owned by an individual or other entity shall be determined as of the status date set forth in paragraph (a) of this section. If a partner, stockholder, or member acquires an interest in the limited partnership, corporation, or other similar entity after such date, and on or before the harvest of the last contract commodity in the area as determined by the Deputy Administrator, the amount of any such interest shall be included in determining the total ownership interest of such partner, stockholder, or member.

(d) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.

§ 1400.102 Joint operations.

Members of joint operations may be separately treated as a person in accordance with the requirements of this part. However, members of a joint operation may request to be jointly treated as one person for the purposes of this part.

§ 1400.103 Trusts.

(a) A trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that a trust that has a sole income beneficiary shall not be considered to be a separate person from such income beneficiary.

(b) Where two or more irrevocable trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person.

(c) A revocable trust and the grantor of such revocable trust shall be considered to be one person.

§ 1400.104 Estates.

If the deceased individual had lived and would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir.

§ 1400.105 Husband and wife.

(a) With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who:

(1) Prior to their marriage were separately engaged in unrelated farming operations, will be determined to be separate persons with respect to such farming operations so long as such operations remain separate and distinct from any farming operation conducted by the other spouse; or

(2) Except as provided in paragraph (b), do not hold, directly or indirectly, a substantial beneficial interest in more than one entity (including themselves) engaged in farm operations that also receive payments as a separate person from either spouse, the spouses may be considered as separate persons if each spouse otherwise meets the requirements under this part to be considered a separate person and is otherwise eligible to receive payment.

(b) With respect to any interest in an estate, for 2 program years after the program year in which the individual died, a husband and wife shall not be considered as having an interest in an entity to the extent resulting from such interest in an estate for purposes of determining persons.

§ 1400.106 Minor children.

(a) Except as provided in paragraph (b) of this section, a minor, including a minor who is the beneficiary of a trust or who is an heir of an estate, and the parent or any court-appointed person such as a guardian or conservator who is responsible for the minor shall be considered to be one person.

(b) A minor may be considered to be a separate person from the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor, if the minor is a producer on a farm and the minor's parent or any court appointed person such as guardian or conservator who is responsible for the minor does not have any interest in the farm on which the minor is a producer or in any production from such farm. In addition the minor must:

(1) Have established and maintain a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; or

(2) Not live in the same household as such minor's parent and:

(i) Be represented by a court-appointed guardian or conservator who is responsible for the minor; and

(ii) Have ownership of the farm vested in the minor.

(c) A person shall be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.

§ 1400.107 States, political subdivisions, and agencies thereof.

A State, political subdivision and agencies thereof shall be considered to be one person.

§ 1400.108 Charitable organizations.

A charitable organization, including a club, society, fraternal or religious organization, shall be considered to be a separate person to the extent that such an entity is engaged in the production of crops as a separate person, except where the land or the proceeds from the farming operation may transfer to an entity that exercises control or authority over such organization.

§ 1400.109 Changes in farming operations.

Any change in a farming operation that would increase the number of persons to which the provisions of this part apply must be bona fide and substantive. If bona fide, the following shall be considered to be substantive changes in the farming operation:

(a) The addition of a family member to a farming operation in accordance with § 1400.208, except that such an addition will not affect the status of any other individual or entity that is added to the farming operation;

(b) With respect to a landowner only, a change from a cash rent to a share rent;

(c) An increase through the acquisition of cropland not previously involved in the farming operation of approximately 20 percent or more in the total cropland involved in the farming operation, if such cropland has planting history of an amount at least normal for the area;

(d) A change in ownership by sale or gift of a significant amount of equipment from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if the transferred amount of such equipment is commensurate with the new individual's or entity's share of the farming operation;

(e) A change in ownership by sale or gift of a significant amount of land from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of land will be considered to be substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of the farming operation.

Subpart C—Actively Engaged in Farming Determinations

§ 1400.201 General provisions for determining whether an individual or entity is actively engaged in farming.

(a) To be considered a person who is eligible to receive payments with respect to a particular farming operation, a person must be an individual or entity actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the individual or entity, independently makes a significant contribution to a farming operation, of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(c) In determining if the individual or entity is actively contributing a significant amount of active personal labor or active personal management the following factors shall be taken into consideration:

(1) The types of crops and livestock produced by the farming operation;

(2) The normal and customary farming practices of the area; and

(3) The total amount of labor and management necessary for such a farming operation in the area.

(d) In order to be considered to be actively engaged in farming an individual or entity specified in §§ 1400.202 through 1400.210 must have:

(1) A share of the profits or losses from the farming operation commensurate with the individual's or entity's contribution to the operation; and

(2) Contributions to the farming operation that are at risk.

§ 1400.202 Individuals.

An individual shall be considered to be actively engaged in farming with respect to a farming operation if the individual makes a significant contribution of:

(a) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

§ 1400.203 Joint operations.

(a) A member of a joint operation shall be considered to be actively engaged in farming with respect to a farming operation if the member makes a significant contribution of:

(1) Capital, equipment, or land or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management or a combination of active personal labor and active personal management.

(b) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1400.201(d), the members of the joint operation who make a significant contribution of active personal management, or a combination of active personal labor and active personal management to the farming operation shall be considered to be actively engaged in farming with respect to such farming operation.

§ 1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations and other similar entities.

A limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be considered to be actively engaged in farming with respect to a farming operation if:

(a) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) The partners, stockholders, or members collectively make a significant contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined beneficial interest of all the partners, stockholders, or members providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent.

§ 1400.205 Trusts.

A trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(a) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(b) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined interest of all the income beneficiaries providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent;

(c) The trust has provided a tax identification number of the trust unless the trust is a revocable trust and the grantor is the sole income beneficiary; and

(d) The trust has provided a copy of the trust agreement to the county committee unless the trust is a revocable trust.

§ 1400.206 Estates.

(a) For 2 program years after the program year in which an individual dies the individual's estate shall be considered to be actively engaged in farming if:

(1) The estate makes a significant contribution of either:

(i) Capital, equipment, or land; or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management; or

(ii) A combination of active personal labor and active personal management.

(b) After the period set forth in paragraph (a) of this section, the deceased individual's estate shall not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for the purpose of obtaining program payments.

§ 1400.207 Landowners.

A person who is a landowner, including landowners with an undivided interest in land, making a significant contribution of owned land to the farming operation, shall be considered to be actively engaged in farming with respect to such owned land, if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results. A landowner also includes a member of a joint operation if the joint operation holds title to land in the name of the joint operation and if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to such member of such joint operation.

§ 1400.208 Family members.

With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management, active personal labor, or a combination of active personal labor and active personal management shall be considered to be actively engaged in farming.

§ 1400.209 Sharecroppers.

A sharecropper who makes a significant contribution of active personal labor to the farming operation shall be considered to be actively engaged in farming.

§ 1400.210 Deceased and incapacitated individuals.

The determining authority shall take into consideration the circumstances involving individuals who have died or become incapacitated during the program year or fiscal year, as applicable. If the individual dies or is incapacitated before a determination is made that the individual is ''actively engaged in farming,'' the representative of the deceased individual's estate or the incapacitated individual, or other person if necessary, must provide the determining authority information to verify that such individual did make a conscious effort to and would have been determined to be actively engaged in farming if not for the individual's death or incapacitation. If the individual dies or is incapacitated after being determined to be ''actively engaged in farming,'' the determining authority shall allow such determination to be in effect for that program year or fiscal year, as applicable. However, the following year such individual or the individual's estate must meet all necessary requirements in order to be determined to be ''actively engaged in farming'' for that year.

§ 1400.211 Persons not considered to be actively engaged in farming.

An individual or entity who does not satisfy all of the provisions of §§ 1400.202 through 1400.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity shall not be considered to be actively engaged in farming.

§ 1400.212 Hybrid seed producers.

The existence of a hybrid seed contract for a producer shall not be taken into account when making an actively engaged in farming determination with respect to such producer. However, such producer must satisfy all other applicable provisions of this part.

Subpart D—Permitted Entities

§ 1400.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

(a) An individual may receive a payment under a program specified in § 1400.1(a) either directly or indirectly from no more than three permitted entities. An individual who receives such a payment shall notify the county committee in the county in which such individual maintains a farming operation whether or not the farming operation is to be considered a permitted entity. An individual may only receive such payments as a result of a farming operation conducted by:

(1) The individual and by no more than two entities in which the individual holds a substantial beneficial interest; or

(2) No more than three entities in which the individual holds a substantial beneficial interest.

(b) Except for entities specified in paragraph (c) of this section, each entity entering into a contract or agreement under a program specified in § 1400.1(a) shall, by the date the contract or agreement is submitted to the county committee, notify in writing:

(1) Each individual or other entity that acquires or holds an interest in such entity of the requirements and limitations provided in this part; and

(2) The county committee of the name and social security number of each individual and the name and taxpayer identification number of each entity that holds or acquires a substantial beneficial interest in such entity.

(c) Entities shall not be subject to the provisions of paragraph (b) of this section if, as determined by the Deputy Administrator:

(1) Because of the number of members of such entity no member is likely to have a substantial beneficial interest in such entity; and

(2) Such provisions would cause undue financial hardship on such entity.

(d)(1) An individual or entity that holds a substantial beneficial interest in more than the number of permitted

entities specified in paragraph (a) of this section for which a contract or agreement has been submitted to the county committee shall notify the county committee in writing, in each county in which they conduct a farming operation, of those entities that shall be considered as permitted entities by a date as determined by the Deputy Administrator following the date the contract or agreement was submitted to the county committee.

(2) The remaining entities in which the individual or entity holds a substantial beneficial interest shall be notified that such entity is subject to reductions in the payments earned by the remaining entity. Such a reduction shall be made in an amount that bears the same relationship to the full payment that the individual's interest in the entity bears to all interests in the entity. The remaining entity's members shall have the opportunity to adjust among themselves their proportionate shares of the program benefits in the designated entity or entities before such reductions are made.

(e) If an individual or entity fails to make such a notification as specified in paragraph (d) of this section, all entities in which the individual or entity holds a substantial beneficial interest shall be subject to a reduction in payments in the manner specified in paragraph (d)(2).

Subpart E—Cash Rent Tenants

§ 1400.401 Eligibility.

(a) Any tenant that is actively engaged in farming in accordance with the provisions of subpart C and conducts a farming operation in which the tenant rents the land for cash, for a crop share guaranteed as to the amount of the commodity, or by any arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to such land under a program specified in § 1400.1(a) shall be ineligible to receive any payment with respect to such cash-rented land unless the tenant makes a significant contribution to the farming operation of:

(1) Active personal labor; or

(2) Active personal management and equipment. If such equipment is leased by the tenant from:

(i) The landlord, the lease must reflect the fair market value of the equipment leased; and

(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts that reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.

(b) [Reserved]

Subpart F— Foreign Persons

§ 1400.501 Eligibility.

(a) Any person who is not a citizen of the United States or a lawful alien shall be ineligible to receive payments, loans and benefits, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person unless such person is an individual who is providing land, capital, and a substantial amount of active personal labor on such farm.

(b)(1) A corporation or other entity shall be ineligible to receive payments, loan, and benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or lawful aliens unless each foreign individual who is a stockholder or other type of member provides a substantial amount of active personal labor in the production of crops on a farm owned or operated by such an entity. However, upon the written request of the entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the entity that is owned by citizens of the United States and lawful aliens or foreign stockholders or other type of member who provide a significant contribution of active personal labor in the production of crops on a farm owned or operated by such entity.

(2) In determining whether more than 10 percent of the beneficial ownership of an entity is held by persons who are not citizens of the United States or by lawful aliens, the beneficial ownership interest shall be the higher of the amount of such interest on:

(i) The date the applicable program contract or agreement is executed by the entity; or

(ii) Any other date prior to the final harvest date that is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other entity shall inform the county committee of any increase in such ownership that occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in such ownership after a payment, loan, or benefit has been made, the entity shall refund such payment, loan, or benefit.

(5) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.

(c) A citizen of the United States, lawful alien, or entity that is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by an individual or entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.

§ 1400.502 Notification.

(a) Any entity, whether foreign or domestic, that executes a program contract or agreement under which a payment, loan, or benefit may be available must provide written notification to the county committee in the county where the entity conducts its farming operation if:

(1) Any individual, group of individuals, entity, or group of entities holds more than a 10 percent beneficial interest in such entity; and

(2) Such individual, group of individuals, entity, or group of entities, in accordance with § 1400.501, are ineligible to receive a payment, loan and benefit.

(b) Such written notification must, if known, include the name and social security number or taxpayer identification number of such individual or entity and of all individuals and entities that hold a beneficial interest.

(c) The failure of the entity to provide this information will result in the ineligibility of the entity to receive any payment, loan, or benefit.

PARTS 1497 AND 1498—[REMOVED]

13. Parts 1497 and 1498 are removed.

14. Part 1470 is redesignated as part 1401.

15. Part 1402 is revised to read as follows:

PART 1402—POLICY FOR CERTAIN COMMODITIES AVAILABLE FOR SALE

Sec.
1402.1 General
1402.2 Submission of offers, terms, and conditions
1402.3 Information
1402.4 Other Sales

Authority: 7 U.S.C. 7285; 15 U.S.C. 714b and 714c.

§ 1402.1 General

To facilitate trade in private trade channels, the Commodity Credit Corporation (CCC) will disseminate general sales offering information in the CCC Sales List which is published in press release form. The CCC Sales List will be revised and republished as necessary. CCC reserves the right to make any amendments deleting or adding to the provisions of the CCC Sales List or changing prices or methods of sale, including but not limited to, changes in the minimum prices and carrying charges. These lists are issued for the purpose of public information and do not constitute an offer to sell by CCC or an invitation for offers to purchase from CCC. The CCC Sales List will set forth either the prices or the pricing basis at which commodity holdings of CCC are available for sale for unrestricted or restricted use, and for export. Information concerning barter and credit will also be included. To be placed on the mailing list for the CCC Sales List press release, requests should be made to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW, Washington, DC 20250–9860.

§ 1402.2 Submission of offers, terms, and conditions

CCC will entertain offers from prospective buyers for the purchase of any commodities on the CCC Sales List. Offers accepted by CCC will be subject to terms and conditions prescribed by CCC. These terms include, among others, payment by cash or irrevocable letter of credit before delivery of the commodity, removal of the commodity from CCC storage within a reasonable period of time, and, in sales for export, proof of exportation.

§ 1402.3 Information

The terms and conditions of sale with respect to any commodity appearing on the CCC Sales List will be furnished upon request addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW, Washington, DC 20250–9860.

§ 1402.4 Other Sales

The general policy of CCC of making sales on a competitive or negotiated basis will continue to apply to all sales not covered by this announcement. Inquiries with respect to such sales may be addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW, Washington, DC 20250–9860.

16. Part 1405 is revised to read as follows:

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

Sec.
1405.1 Interest.
1405.2 Basic rule of fractions.
1405.3 Effect of changes in regulations.
1405.4 Delegations of authority.
1405.5 Notice and comment.
1405.6 Crop insurance requirement.

Authority: 15 U.S.C. 714b and 714c.

§ 1405.1 Interest.

(a) Except as may otherwise be determined by CCC as provided in individual program regulations, program contracts or such other means as deemed appropriate by CCC the rate of interest that is applicable to CCC loans shall be equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date the loan is disbursed by CCC, plus 1 percent. This rate of interest shall be in effect until the earlier of the maturity of the loan or the next January 1.

(b) The rate of interest applicable to all CCC loans that are outstanding as of January 1 of any year shall be adjusted as of such date to equal the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on such date, plus 1 percent. This rate shall be in effect until the earlier of the maturity of the loan or the next January 1. The rate of interest applicable to CCC loans as of January 1 of any year shall be announced by CCC by press release or other means.

§ 1405.2 Basic rule of fractions.

Fractions shall be rounded in accordance with the provisions of 7 CFR part 718.

§ 1405.3 Effect of changes in regulations.

Unless otherwise indicated, the regulations in effect in this chapter as of April 4, 1996, shall continue to apply to the 1991 through 1995 crops of agricultural commodities, to milk produced on or before May 1, 1996, and to contracts entered into prior to any amendments to this chapter after that date.

§ 1405.4 Delegations of authority.

The delegations of authority relating to the CCC programs and activities are set forth in the by-laws of CCC and in dockets approved by the CCC Board of Directors. Copies of the By-laws and the dockets may be obtained from the Secretary of CCC.

§ 1405.5 Notice and comment.

The level of loans, purchases and payments made in accordance with the programs set forth in this chapter shall be determined without regard to the notice and comment provisions of 5 U.S.C. 553.

§ 1405.6 Crop insurance requirement.

(a) To be eligible for any benefits or payments under 7 CFR parts 1410, 1412, 1421, 1427, 1435, 1443, 1446, or 1464, the producer must obtain at least the catastrophic level of insurance for each crop of economic significance in which the producer has an interest or provide a written waiver to the Secretary that waives any eligibility for emergency crop loss assistance in connection with the crop, if insurance is available in the county for the crop. In meeting this requirement, the producer may:

(1) Obtain at least the catastrophic level of crop insurance in all counties for each crop of economic significance in which the producer has an interest;

(2) Obtain at least the catastrophic level of crop insurance for some, but not all, crops of economic significance for which the producer has an interest, and sign a waiver; or

(3) Sign a waiver that waives any eligibility for crop loss assistance in connection with the producer's crop.

(b) Crop of economic significance. The term ''crop of economic significance'' means a crop that has contributed in the previous year, or is expected to contribute in the current crop year, 10 percent or more of the total expected value of all crops grown by the producer. However, notwithstanding the preceding sentence, if the total expected liability under the catastrophic risk protection endorsement is equal to or less than the administrative fee required for the crop, such crop will not be considered a crop of economic significance.

17. Part 1412 is added to read as follows:

PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON

Subpart A—General Provisions

Sec.
1412.101 Applicability.
1412.102 Administration.

Authority: 7 U.S.C. 7201 et seq.; and 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1412.101 Applicability.

The Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) provides producers on farms with 1996 wheat, corn, barley, grain sorghum, oats, upland cotton and rice crop acreage bases the opportunity to enter into Production Flexibility Contracts with the Commodity Credit Corporation (CCC) for the years 1996 through 2002. Producers who participate in the program must fully comply with the terms of the production flexibility contracts and this part, and in return will receive production flexibility payments.

§ 1412.102 Administration.

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and shall be carried out by State and county Farm Service Agency (FSA) committees (herein called State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Executive Vice President (Administrator, FSA), or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, except statutory deadlines, and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(f) A representative of CCC may execute a form CCC–478, ''1996 through 2002 Production Flexibility Contract'' only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, is null and void.

§ 1412.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Production Flexibility Program. The terms defined in parts 718 of this title and 1400 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Annual payment amount is the amount to be paid under a contract in effect for each fiscal year with respect to a contract commodity and equals the product of:

(1) 85 percent of the enrolled contract acreage multiplied by

(2) The payment yield multiplied by

(3) The payment rate except that the total of such payments shall not exceed $40,000 per person in accordance with part 1400 of this chapter.

Contract means forms CCC–478 and CCC–478 Appendix.

Contract acreage means a quantity of acres enrolled in a contract.

Contract commodity means wheat, corn, grain sorghum, barley, oats, upland cotton, and rice.

Contract payment means a payment made under this part pursuant to a production flexibility contract.

Corn means field corn or sterile high-sugar corn. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are not corn.

Dry peas means Austrian, wrinkled seed, green, yellow, and Umatilla.

Eligible acreage means the crop acreage base that would have been established for a contract commodity in accordance with regulations in effect on January 1, 1996, at part 1413 of this chapter. If a crop has a designated crop-rotation crop acreage base for 1995, the 1996 crop acreage base established for such crop is determined by averaging planted and considered planted acreages determined in accordance with part 1413 of this chapter as it was in effect on January 1, 1996, taking into consideration the number of years in the most recent rotation cycle. The sum of the crop acreage bases for a farm cannot exceed the cropland for the farm, less cropland enrolled in the Conservation Reserve Program in accordance with parts 704 and 1410 of this title, except to the extent that such excess is due to an established practice of double cropping on the farm in accordance with regulations in effect as of January 1, 1996, at part 1413 of this chapter.

Grain sorghum means grain sorghum of a feed grain or dual purpose variety (including any cross that, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is not considered a grain sorghum.

Oilseeds means acreages of soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, or, if designated by CCC, other oilseeds, planted for harvest as seed, or volunteer acreages of such crops from which the seed is harvested.

Owner means an owner as defined in part 718 of this title and, only for purposes of enrolling a farm in the program authorized by this part or taking any subsequent action to maintain the eligibility of the farm, any agency of the Federal Government; however, such agency shall not be eligible to receive any payment made pursuant to such contract.

Payment rate means the annual payment rate determined and announced by CCC.

Payment yield means the payment yield established for the crop of a contract commodity for the farm in accordance with the regulations in effect on January 1, 1996, at part 1413 of this chapter. CCC shall adjust the payment yield to reflect the additional payments made in accordance with § 1413.15 of such regulations.

Rice means rice excluding sweet, glutinous, or candy rice such as Mochi Gomi.

Upland cotton means planted and stub cotton that is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate. For program purposes, brown lint cotton is considered upland cotton.

§ 1412.104 Performance based upon advice or action of county or State committee.

The provisions of § 718.8 of this title are applicable to this part.

§ 1412.105 Appeals.

A producer may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart B—Production Flexibility Contract Terms and Enrollment Provisions

§ 1412.201 Production flexibility contract.

(a) CCC shall offer to enter into a 7-year contract with an eligible producer on a farm having eligible acreage.

(b) A transfer (or change) in the interest of an owner or producer subject to a contract in the contract acreage covered by the contract shall result in the termination of the contract with respect to the acreage, unless the transferee or owner of the acreage agrees to assume all obligations under the contract. The termination shall be effective on the date of the transfer or change.

§ 1412.202 Eligible producers.

Producers eligible to enter into a contract are:

(a) An owner of a farm who assumes all or a part of the risk of producing a crop;

(b) A producer (other than an owner) on a farm with a share-rent lease for such farm, regardless of the length of the lease, if the owner enters into the same contract;

(c) A producer (other than an owner) on an eligible farm who rents such farm under a lease expiring on or after September 30, 2002, in which case the owner is not required to enter into the contract;

(d) A producer (other than an owner) on an eligible farm who cash rents such farm under a lease expiring before September 30, 2002. The owner of such farm may also enter into the same contract. If the producer elects to enroll less than 100 percent of the crop acreage bases in the contract, the consent of the owner is required;

(e) An owner of an eligible farm who cash rents such farm and the lease term expires before September 30, 2002, if the tenant declines to enter into a contract. In the case of an owner covered by this paragraph, contract payments shall not begin under a contract until the lease held by the tenant ends; and

(f) An owner or producer described in paragraphs (a) through (e) regardless of whether the owner or producer purchased catastrophic risk protection in accordance with part 1405 of this chapter.

§ 1412.203 Notification of eligible contract acreage.

The owner, and operator and all producers on a farm shall be notified in writing of the number of acres eligible for enrollment in a contract.

§ 1412.204 Reconstitutions.

Farms shall be reconstituted in accordance with part 718 of this title.

§ 1412.205 Reducing contract acreage.

(a) A permanent reduction of all or a portion of a farm's contract acreage or eligible contract acreage shall be allowed at the written request of the owner to the county committee on Form CCC–505.

(b) If the producers convert contract acreage to a non-agricultural commercial or industrial use, the contract acreage shall be reduced accordingly.

§ 1412.206 Planting flexibility.

(a) For the 1996 through 2002 crop years, any crop may be planted on contract acreage on a farm, except as limited in paragraph (c) of this section. Any crop may be planted on cropland in excess of the contract acreage.

(b) Contract acreage may be hayed or grazed at any time.

(c) Planting fruits and vegetables (except lentils, mung beans, and dry peas), is prohibited on contract acreage, except:

(1) A producer may double crop fruits or vegetables with a contract commodity in any region described in paragraph (d) of this section, in which case contract payments will not be reduced. Double cropping for purposes of this section means planting for harvest fruits or vegetables in cycle on the same acres with a contract commodity planted for grain or lint in a 12 month period under weather conditions normal for the region and being able to repeat the same cycle in the following 12 month period;

(2) On a farm that the county committee determines has a history of planting fruits or vegetables, in which case contract payments shall be reduced in accordance with paragraph (e) of this section;

(3) By a producer that the county committee determines a history of fruit or vegetables as the simple average of the sum of a specific fruit or vegetable planted for harvest by the producer during the years 1991 through 1995, excluding any year in which a fruit or vegetable was not planted, in which case contract payments shall be reduced in accordance with paragraph (e); or

(4) On a farm with a 1995 rotation designation crop acreage base established in accordance with part 1413 of this title as in effect on January 1, 1996, and the producers on the farm planted fruits or vegetables as a part of the rotation, in which case there will be no reduction in contract payments if the acreage of fruits and vegetables continue to be planted in the same rotation cycle with contract commodities, the acreage of fruits and vegetables is not increased, and an annual acreage report is filed for the farm.

(d) For purposes of this part, the following counties have been determined to be regions having a history of doublecropping contract commodities with fruits or vegetables. State committees have established the following counties as regions within their respective States:

Alabama

Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

Alaska

None.

Arkansas

Ashley, Benton, Clay, Conway, Crawford, Cross, Drew, Franklin, Independence, Jackson, Lawrence, Lee, Lincoln, Little River, Logan, Miller, Perry, Poinsett, Pope, Prairie, Pulaski, Sebastian, and Woodruff.

Arizona

Cochise, Graham, Greenlee, LaPaz, Maricopa, Pima, Pinal, and Yuma.

California

Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

Caribbean Office

None.

Connecticut

None.

Colorado

None.

Delaware

Kent, New Castle, and Sussex.

Florida

All counties.

Georgia

Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brooks, Bryan, Bulloch, Burke, Calhoun, Candler, Catoosa, Chatham, Clay, Clinch, Coffee, Colquitt, Columbia, Cook, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Effingham, Emanuel, Evans, Floyd, Forsyth, Franklin, Glascock, Grady, Hart, Houston, Irwin, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Lauren, Lee, Liberty, Long, Lowndes, McDuffie, Macon, Miller, Mitchell, Monroe, Montgomery, Morgan, Peach, Pierce, Pike, Pulaski, Putnam, Randolph, Richmond, Schley, Screven, Seminole, Stephens, Sumter, Tattnall, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Turner, Twiggs, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, Wilkinson, and Worth.

Hawaii

None (no CAB's).

Idaho

None.

Illinois

Calhoun, Clark, Crawford, Edgar, Effingham, Gallatin, Iroquois, Kankakee, Lawrence, Madison, Marion, Mason, Monroe, St. Clair, Union, Vermilion and White.

Indiana

Allen, Bartholemew, Gibson, Hamilton, Knox, LaGrange, Lake, Madison, Miami, Posey, Sullivan, Vandenberg, and Warrick.

Iowa

Louisa.

Kansas

None.

Kentucky

Clinton and Wayne.

Louisiana

Avoyelles, Franklin, Grant, Rapides, and Morehouse.

Maine

None.

Maryland

Baltimore, Caroline, Carroll, Dorchester, Kent, Queen Annes, Somerset, Talbot, Wicomico, and Worcester.

Massachusetts

None.

Michigan

None.

Minnesota

None.

Mississippi

Calhoun, Carroll, Covington, Holmes, Jefferson Davis, Lowndes, Marshall, Monroe, Montgomery, and Prentiss.

Missouri

Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Ripley, Scott, and Stoddard.

Montana

None.

Nebraska

None.

Nevada

Clark.

New Jersey

Burlington, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Salem.

New Hampshire

None.

New Mexico

Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

New York

Orange and Suffolk.

North Carolina

Beaufort, Bladen, Brunswick, Cabarrus, Camden, Carteret, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Edgecombe, Franklin, Granville, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenburg, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Tyrell, Union, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, and Yadkin.

North Dakota

None.

Ohio

Auglaize, Brown, Henry, Logan, Morgan, Muskingham, and Wood.

Oklahoma

Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Kay, Kingfisher, Kiowa, LeFlore, Logan, McClain, McIntosh, Major, Marshall, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pottawatomie, Roger Mills, Rogers, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washita, Woods, and Woodward.

Oregon

Benton, Linn, Morrow, and Umatilla.

Pennsylvania

Adams, Allegheny, Beaver, Bucks, Centre, Chester, Columbia, Cumberland, Delaware, Franklin, Lancaster, Luzerne, Mifflin, Montgomery, Montour, Northumberland, Schuylkill, Snyder, Union, Wyoming, and York.

Rhode Island

None.

South Carolina

All counties.

South Dakota

None.

Tennessee

Bledsoe, Cannon, Carroll, Claiborne, Coffee, Crockett, Dyer, Greene, Hardeman, Haywood, Jefferson, Knox, Lake, Lauderdale, Lincoln, Madison, Meigs, McMinn, Pickett, Rhea, Robertson, and Union.

Texas

Anderson, Armstrong, Atascosa, Bailey, Baylor, Briscoe, Brooks, Cameron, Castro, Cherokee, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dimmit, Duval, Floyd,

Foard, Frio, Gaines, Hale, Hall, Hartley, Haskell, Hidalgo, Jim Hogg, Jim Wells, Kinney, Kleberg, Knox, Lamb, Lubbock, Maverick, Medina, Moore, Motley, Nacogdoches, Oldam, Panola, Parmer, Pecos, Randall, Rusk, San Patricio, Starr, Swisher, Terry, Uvalde, Webb, Wilbarger, Willacy, Yoakum, Zapata, and Zavala.

Utah

Davis and Weber.

Vermont

None.

Virginia

Accomack, Augusta, Botetourt, Brunswick, Campbell, Charlotte, Chesapeake, Cumberland, Dinwiddie, Halifax, Hanover, Isle of Wight, King and Queen, King William, Lunenburg, Mecklenburg, Middlesex, Nelson, New Kent, Northampton, Nottoway, Page, Pittsylvania, Powhatan, Prince George, Richmond, Rockbridge, Rockingham, Shenandoah, Southampton, Stafford, Suffolk, Sussex, Virginia Beach, and Westmoreland.

Washington

Adams, Benton, Clark, Cowlitz, Franklin, Grant, Klickitat, Lewis, Skagit, and Yakima.

West Virginia

Mason and Putnam.

Wisconsin

Brown, Calumet, Chippewa, Columbia, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Kenosha, Marquette, Racine, Richland, Rock, St. Croix, Sauk, Walworth, Waushara, and Winnebago.

Wyoming

None.

(e) For each acre a producer plants to fruits or vegetables on contract acreage under paragraphs (c)(2) or (3) of this section, 1 acre will not be used in determining the contract payment. The calculation for this reduction is based on the contract crop with the lowest payment amount per acre. Reductions will be prorated among all producers based on each producer's share of the total payment for the farm. Such producers may adjust the reduction in payments as they agree upon.

(f) Fruits and vegetables include but are not limited to all nuts except peanuts, certain fruit-bearing trees and: acerola (barbados cherry), antidesma, apples, apricots, aragula, artichokes, asparagus, atemoya, (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, faba, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok choy, boysenberries, breadfruit, broccoflower, broccolo-cavalo, broccoli, brussel sprouts, cabbage, cai lang, caimito, calabaza, carambola (star fruit), calaboose, carob, carrots, cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chickpeas/garbanzo beans, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, cressie greens, crenshaw melons, cucumbers, currants, cushaw, daikon, dasheen, dates, dry edible beans, dunga, eggplant, elderberries elut, endive, escarole, etou, feijoas, figs, gai lien, gailon, galanga, genip, gooseberries, grapefruit, grapes, guambana, guavas, guy choy, chinese mustard, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kamut, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes, lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mongosteen, mar bub, melongene, mesple, mizuna, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radiochio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recao, rhubarb, rutabaga, santa claus melon, salsify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chai, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, and yam.

(g) Fruits or vegetables planted on contract acreage for green manure, haying, or grazing are not considered as planted to fruits or vegetables, but producers planting fruits and vegetables for such purposes shall pay a fee to cover the cost of a farm visit, in accordance with part 718 of this title, to verify that the crop has not been harvested.

§ 1412.207 Succession-in-Interest to a production flexibility contract.

(a) A person may succeed to the contract if there has been a change in the operation of a farm, such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number of partners; or

(3) A foreclosure, bankruptcy, or involuntary loss of the farm after enrollment in a production flexibility contract.

(b) A succession in interest to the contract is not permitted if CCC determines that the change results in a violation of the landlord-tenant provisions set forth at § 1412.303, or otherwise defeats the purpose of the program.

(c) If a producer who is entitled to a contract payment dies, becomes incompetent, or is otherwise unable to receive the contract payment, the CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner must inform the county committee of changes in interest by:

(1) August 31 of the current fiscal year, if producers on the contract remain the same, but payment shares change; or

(2) 30 days after the change is made on the farm but no later than August 31, if a new producer is being added to the contract.

(e) In any case in which payment has previously been made to a predecessor, such payment shall not be paid to the successor. If the predecessor refunds an advance contract payment, such producer shall not be assessed interest in accordance with part 1403 of this chapter.

Subpart C—Financial Considerations Including Sharing Production Flexibility Payments

§ 1412.301 Limitation of production flexibility contract payments.

The sum total of annual contract payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

§ 1412.302 Contract payment provisions.

(a) A producer may request 50 percent of each fiscal year's contract payment as an advance payment.

(b) At the option of the producer, for fiscal year 1997 and each subsequent fiscal year, 50 percent of the annual contract payment shall be made on December 15 or January 15, as requested by the producer. In order to receive an advance payment the producers on the

farm must be in compliance with all of the requirements of the contract at the time of the advance payment.

(c) A final contract payment shall be made not later than September 30 of each of the fiscal years 1996 through 2002.

(d) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the production flexibility payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof shall not become available for any other producer; and

(2) The producer shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter shall be applicable to all unearned payments.

§ 1412.303 Sharing of contract payments.

(a) Each eligible producer on a farm shall be given the opportunity to enroll in a contract and receive contract payments determined fair and equitable as agreed to by the producers on the farm and approved by the county committee.

(1) Producers must provide a copy of their written lease to the county committee, and, in the absence of a written lease, must provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease.

(2) A lease will be considered a cash lease if the lessor receives only a sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(3) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement shall be considered to be a share lease.

(4) If a lease provides for both a cash payment and a share of the crop or proceeds, the county committee will determine a normal cash lease amount by crop for the area. If the guaranteed production or cash lease payment is equal to or exceeds the normal cash lease established by the county committee for the area, then the lease shall be considered to be a cash lease.

(5) If the lease is a cash lease, the landlord is not eligible for a contract payment.

(6) For a lease providing both a cash payment and a share of the crop or proceeds, if the cash guarantee is less than the normal cash guarantee for the area, the lease shall be considered a share lease.

(b) When contract acreage is leased on a share basis, neither the landlord nor the tenant shall receive 100 percent of the contract payment for the farm.

(1) A landowner may receive up to 100 percent of the contract payment if no lease exists with respect to the contract acreage. The leasing of grazing or haying privileges is not considered cash leasing.

(2) [Reserved]

(c) The county committee shall approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landowners, tenants and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) The county committee determines that the interests of tenants and sharecroppers are being protected; and

(3) That the division of payments is not done in a manner to circumvent the provisions of part 1400 of this chapter.

§ 1412.304 Provisions relating to tenants and sharecropper.

(a) Contract payments shall not be made by CCC if:

(1) The landlord or operator has adopted a scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC; or

(2) The landlord terminated a lease in violation of state law as determined by a state court.

(b) If the landowners, tenants and sharecroppers on a farm fail to reach an agreement regarding the division of contract payments for a fiscal year, the county committee shall make the payment at a later date if all persons eligible to receive a share of the contract payment, have executed a contract no later than September 30 of that fiscal year and subsequently agree to the division of contract payment.

Subpart D—Contract Violations and Diminution in Payments

§ 1412.401 Contract violations.

(a) Except as provided in paragraph (b) of this section, if a producer subject to a contract violates a requirement of the contract specified in §§ 1412.201(6)(c), 1412.402, 1412.403, and 1412.405, the Deputy Administrator shall terminate the contract with respect to the producer on each farm in which the producer has an interest. Upon such termination, the producer shall forfeit all rights to receive future contract payments on each farm in which the producer has an interest and shall refund all contract payments received by the producer during the period of the violation, plus interest with respect to the contract payments as determined in accordance with part 1403 of this chapter.

(b) If the county committee determines that a violation is not serious enough to warrant termination of the contract under paragraph (a) of this section, the county committee may require the producer subject to the contract either, or both of the following:

(1) Refund to CCC that part of the contract payments received by the producer during the period of the violation, plus interest determined in accordance with part 1403 of this chapter; and

(2) If there is a violation of § 1412.206, accept a reduction in the amount of current and future contract payments that is equal to the sum proportionate to the severity of:

(i) Market value of the fruit and vegetables planted on each contract acreage; and

(ii) The contract payment for each such acre.

(iii) Producers who do not plant a crop on contract acreage must protect any such land from weeds and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision by a producer will result in a reduction in the producer's payment for the farm by an amount equal to 3 times the cost of maintenance of the acreage, but not to exceed 50 percent of the payment for the farm for that fiscal year. The second violation of this provision will result in a reduction in the payment for the farm by an amount equal to 3 times the cost of maintenance of the acreage, not to exceed the payment for the farm for that fiscal year.

§ 1412.402 Violations of highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title, apply to this part.

§ 1412.403 Violations regarding controlled substances.

The provisions of § 718.12 of this title apply to this part.

§ 1412.404 Contract liability.

All producers receiving a share of the contract payment are jointly and severally liable for contract violations and resulting repayments.

§ 1412.405 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

§ 1412.406 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1412.407 Certification.

As a condition of eligibility for contract payments, the operator or owner must timely submit a report of fruit and vegetable acreage in accordance with part 718 of this title. If such operator or owner does not report all of the fruits and vegetables planted on contract acreage, the contract shall be terminated with respect to such farm unless the provisions of § 1412.40(b)(1) and (2) are applicable.

Subpart E—Production Flexibility and Conservation Reserve Programs

§ 1412.501 Timing for enrollment and termination of production flexibility contracts.

(a) At the beginning of each fiscal year, the Secretary shall allow an eligible producer on a farm with acreage enrolled in a Conservation Reserve Program contract in accordance with parts 704 or 1410 of this title that terminates after August 1, 1996, to enter into or modify an existing production flexibility contract if such land otherwise would have been eligible for enrollment under this part as of August 1, 1996.

(b) A production flexibility contract shall begin with the 1996 crop of a contract commodity or in the case of acreage that was enrolled in the Conservation Reserve Program, the date the production flexibility contract was entered into or modified to include the acreage previously subject to the Conservation Reserve Program contract.

(c) All contracts shall terminate on September 30, 2002, unless terminated at an earlier date by mutual consent of all parties.

(d) A contract for farms whose Conservation Reserve Program contract terminates after August 1, 1996, shall be signed by a producer no later than November 30 of the fiscal year following the fiscal year the Conservation Reserve Program contract is terminated.

(e) A Conservation Reserve Program contract that is terminated:

(1) In fiscal year 1996, if the effective date of the Conservation Reserve Program contract termination is earlier than August 1, 1996, and the land that was subject to the Conservation Reserve Program contract is enrolled in a production flexibility contract, the owner or producer is eligible to receive both the 1996 production flexibility contract payment and a prorated Conservation Reserve Program payment.

(2) In fiscal years 1997 through 2002, if a conservation reserve contract is terminated, and the land that was subject to the conservation reserve contract is enrolled in a production flexibility contract, the owner or producer may elect to receive either the production flexibility contract payments or a prorated Conservation Reserve Program payment, but not both.

PART 1413—[REMOVED]

18. Part 1413 is removed.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

19. The authority citation for 7 CFR Part 1421 is revised to read as follows:

Authority: 7 U.S.C. 7231–7235, 7237; and 15 U.S.C. 714b and 714c.

20. The subpart consisting of §§ 1421.1 through 1421.32 and the subpart heading are revised, the subpart heading preceding § 1421.200 and § 1421.200 are revised, and §§ 1421.201 through 1421.217 are removed, as set forth below:

Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 Through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

Sec.

Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1996 through 2002 crops of barley, corn, grain sorghum, oats, peanuts, rice, wheat, and oilseeds as set forth in § 1421.3. These regulations set forth the terms and conditions under which loans shall be entered into and loan deficiency payments made by the Commodity Credit Corporation (CCC). Additional terms and conditions are set forth in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive loans and loan deficiency

payments. All loans made under this subpart are nonrecourse unless as noted in § 1421.31. With respect to warehouse-stored loans for peanuts, loans shall be made in accordance with part 1446 of this chapter.

(b) Basic county loan rates, the schedule of premiums and discounts, and forms that are used in administering loans and loan deficiency payments for a crop of a commodity are available in State and county FSA offices (State and county offices, respectively). The forms for use in connection with the programs in this section shall be prescribed by CCC.

(c)(1) Loans and loan deficiency payments shall be available as provided in this part with regard to barley, corn, grain sorghum, oats, oilseeds, and wheat produced in the United States.

(2) Loans and loan deficiency payments shall be available only with respect to rice produced in the continental United States.

(3) Farm-stored loans shall be available only with respect to farmer stock peanuts, as defined in part 1446 of this chapter, that are produced in the United States and that are also of a type specified in part 729 of this title.

(d) Loans and loan deficiency payments shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1421.2 Administration.

(a) The loan and loan deficiency payment program that is applicable to a crop of a commodity shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA) and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee or the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the loan and loan deficiency payment program.

(f) A representative of CCC may execute loans and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title and parts 1412, 1425, and 1427 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Basic loan rate means the loan rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

High moisture commodities means corn and grain sorghum normally harvested and intended to be stored or marketed in a high moisture condition.

Loan deficiency quantity means the eligible quantity that was certified by the producer as eligible to be pledged as collateral for a loan, for which the producer elected to forgo obtaining the loan.

Loan quantity means the quantity on which the loan was disbursed shown on the note and security agreement.

Oilseeds means any crop of soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

§ 1421.4 Eligible producers.

(a) An eligible producer of a crop of a commodity shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity) that:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12, 718, 1405, 1412, and 1446 of this title.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. Loan or loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans or loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d)(1) Two or more producers may obtain a single joint loan with respect to commodities that are stored in the same farm storage facility. Two or more producers may obtain individual loans with respect to their share of the commodity that is stored commingled in

a farm storage facility with commodities owned by other producers if such other producers execute Form CCC–665 that provides that such producers shall obtain the permission of a representative of the county committee before removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities that have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities in accordance with § 1421.17.

(2) Two or more producers may obtain a single joint loan with respect to commodities that are stored in an approved warehouse if the warehouse receipt that is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) The county committee may deny a producer a loan on farm-stored commodities if the producer has:

(i) Been convicted of a criminal act;

(ii) Has made a misrepresentation, with respect to acquiring a farm-stored loan or in the maintenance of the commodity pledged as security for a farm-stored loan; or

(iii) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan.

(2) In such cases, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity that would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

(f) Warehouse-stored loans may be made to a warehouse operator who, acting on behalf and with the authorization of a producer, tenders to CCC warehouse receipts issued by such warehouse operator for a commodity produced by such warehouse operator only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

(g) An approved cooperative marketing association (CMA) may obtain a loan on the eligible production of such commodity or loan deficiency payment with respect to such commodity on behalf of the members of the CMA who are eligible to receive loans and loan deficiency payments with respect to a crop of a commodity. For purposes of this subpart and in applicable loan and loan deficiency payment forms, the term producer includes an approved CMA.

(h) With respect to peanuts tendered to CCC for loan, a producer must also meet the provisions of part 1446 of this title. Before obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler with the State FSA office of the State in which the producer's farm is located.

(i)(1) Two or more producers may obtain a single joint loan deficiency payment with respect to commodities that are stored in the same farm storage facility. Two or more producers may obtain individual loan deficiency payments with respect to their share of the commodity that is stored commingled in a farm storage facility with commodities owned by other producers. All producers who store a commodity in a farm storage facility in which commodities for which a loan deficiency payment has been requested shall be liable for any damage incurred by CCC with respect to incorrect certification of such commodities in accordance with § 1421.16.

(2) Two or more producers may obtain a single joint loan deficiency payment with respect to commodities that are stored in an approved or unapproved warehouse if the acceptable documentation representing an eligible commodity for which a loan deficiency payment is requested is completed jointly for such producers.

(3) Each producer who is a party to a joint loan deficiency payment will be jointly and severally responsible and liable for the breach of the obligations set forth in the loan deficiency payment documents and in the applicable regulations in this subpart.

§ 1421.5 General eligibility requirements.

(a) A producer must, unless otherwise authorized by CCC, request loans and loan deficiency payments at the county office that, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved CMA must, unless otherwise authorized by CCC, request loans and loan deficiency payments at the location designated by CCC. An eligible producer who produces a crop of barley, corn, grain sorghum, oats, rice, or wheat on a farm covered by a production flexibility contract shall be eligible for a loan on any production of that commodity. In the case of oilseeds, any production produced by an eligible producer shall be eligible for a loan. To receive loans or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement or loan deficiency payment application on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: quota peanuts pledged as collateral for a farm-stored loan, barley, canola, flaxseed, oats, rapeseed, and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; or

(4) May 31 of the year following the year in which the following crops are normally harvested: corn, grain sorghum, mustard seed, rice, safflower, soybeans, and sunflower seed.

(b)(1) To be eligible to receive loans or loan deficiency payments, commodities must be tendered to CCC by an eligible producer and must be eligible and in existence when approved by CCC. To be eligible to receive loans, commodities must also be stored in approved storage at the time of disbursement of loan proceeds. The commodity must not have been sold, nor any sales option on such commodity granted, to a buyer under a contract that provides that the buyer may direct the producer to pledge the commodity to CCC as collateral for a loan or to obtain a loan deficiency payment. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. Notwithstanding any other provision of this part, such commodities that contain vomitoxin levels of 5 or less parts per million or contain levels of more than 5 parts per million, may be eligible for a nonrecourse or recourse loan, respectively. Corn containing aflatoxin levels not exceeding 20 parts

per billion may be eligible for a nonrecourse loan.

(2) The determination of class, grade, grading factors, milling yields, and other quality factors, including the determination of type, quality and quantity for peanuts:

(i) With respect to barley, canola, corn, flaxseed, grain sorghum, oats, rice, soybeans, sunflower seed for extraction of oil, and wheat, shall be based upon the Official United States Standards for Grain and the Official United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination may be paid by CCC. The grade and grading requirements that are used in administering loans and loan deficiency payments for the commodities in this paragraph are available in State and county offices.

(ii) With respect to a crop of mustard seed, rapeseed, safflower seed, and sunflower seed used for a purpose other than to extract oil, shall be based on quality requirements established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official quality determination may be paid by CCC. The quality requirements that are used in administering loans and loan deficiency payments for the oilseeds in this paragraph are available in State and county offices.

(iii) With respect to peanuts, shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn, but may not be ground ear corn. If the collateral is ear corn, the producer must:

(i) Before delivery to CCC, shell such corn without cost to CCC; and

(ii) Before removal of the commodity for shelling, have the approval of CCC in accordance with § 1421.20. Corn pledged as collateral for a warehouse-stored loan must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage;

(ii) A bushel of corn shall be 56 pounds of shelled corn;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be determined in tons and hundredths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of soybeans shall be 60 pounds of soybeans with no more than 1 percent foreign material;

(vii) A bushel of grain sorghum shall be 56 pounds of grain sorghum free of dockage;

(viii) A bushel of wheat shall be 60 pounds of wheat free of dockage;

(ix) Quantities of farm-stored canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed shall be determined in whole units of 100 pounds of the respective commodity;

(x) A bushel of canola shall be 50 pounds of canola free of dockage;

(xi) A bushel of flaxseed shall be 56 pounds of flaxseed free of dockage;

(xii) A bushel of mustard seed shall be 54 pounds of mustard seed free of dockage;

(xii) A bushel of rapeseed shall be 50 pounds of rapeseed free of dockage;

(xiv) A bushel of safflower seed shall be 40 pounds of safflower seed free of dockage; and

(xv) A bushel of sunflower seed shall be 28 pounds of sunflower seed free of foreign material.

(5) With respect to farm-stored loans and loan deficiency payments, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed.

(c)(1) To be eligible to receive loans or loan deficiency payments, a producer must have the beneficial interest in the commodity that is tendered to CCC for a loan or loan deficiency payment. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, the producer and a former producer whom the producer tendering the commodity to CCC has succeeded had such an interest in the commodity. Commodities obtained by gift or purchase shall not be eligible to be tendered to CCC for loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan or loan deficiency payment shall be eligible to receive loans and loan deficiency payments whether succession to the commodity occurs before or after harvest so long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control, title, and risk of loss in the commodity, including the right to make all decisions regarding the tender of such commodity to CCC for loans or loan deficiency payments, and the producer:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, with respect to such commodity if all other eligibility requirements are met and the option to purchase contains the following provision:

> Notwithstanding any other provision of this option to purchase, title, risk of loss, and beneficial interest in the commodity, as specified in 7 CFR part 1421, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any CCC loan which is secured by such commodity; (2) the date the CCC claims title to such commodity; or (3) such other date as provided in this option

or

(ii) Enters into a contract to sell the commodity if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.

(3) If loans and loan deficiency payments are made available to producers through an approved CMA in accordance with part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the CMA or its member CMA's, except as otherwise provided in this section. Commodities delivered to such a CMA shall not be eligible to receive loans or loan deficiency payments if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter.

(d)(1) A producer may, before the final date for obtaining a loan for a commodity, re-offer as collateral for such a loan any commodity that had been previously pledged as collateral for a loan, except with respect to:

(i) Commodities that have been acquired in accordance with part 1401 of this chapter;

(ii) Commodities that have been redeemed at a rate that is less than the loan rate as determined in accordance with § 1421.25; and

(iii) Commodities for which a payment has been made in accordance with § 1421.29.

(2) The commodity re-offered as security for the subsequent loan shall

have the same maturity date as the original loan.

(e) Producers who redeem loan collateral at the lower loan repayment rate in accordance with § 1421.25 or, in lieu of receiving a loan receive a loan deficiency payment in accordance with § 1421.29, shall provide CCC with:

(1) Evidence of production of the collateral such as sales receipts or other written documentation acceptable to CCC; or

(2) The storage location of the collateral that has not been otherwise disposed of and allow CCC access to such collateral; and

(3) Permission to inspect, examine, and make copies of the records and other written data as deemed necessary to verify the eligibility of the producer and commodity.

(f) Producers who redeem loan collateral or receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of production acceptable to CCC before the final loan availability date of the crop year for such commodity following the crop year for which the loan or loan deficiency payment was made. Production evidence includes but is not limited to:

(1) Evidence of sales;

(2) Load summary or assembly sheets;

(3) Warehouse receipts issued by a warehouse that is approved according to § 1421.8(b) or by a warehouse that is not approved; and

(4) Quantities determined by measurement at CCC's discretion.

(g) If the producer fails to provide acceptable evidence of production as required in paragraph (e)(1) of this section, such producer shall be required to repay the market gain or loan deficiency payment and charges, plus interest.

(h) The loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible commodity, in existence, and is in approved storage. If the commodity was not either an eligible commodity, in existence, or in approved storage at the time of disbursement, the total amount disbursed under the loan and charges plus interest shall be refunded promptly by the producer.

(i) CCC shall limit the total loan quantity for a loan disbursement or loan deficiency quantity for a loan deficiency payment based on a subsequent increase in the quantity of eligible commodity by the final loan availability date to 100 percent of the outstanding quantity of such loan or loan deficiency payment application. A producer may obtain a separate loan or loan deficiency payment before the final loan availability date for the commodity for quantities in excess of 100 percent of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.6 Maturity dates.

(a)(1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities, except peanuts and loan collateral transferred in accordance with § 1421.17(c) and (d), no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 30 days in advance of the accelerated maturity date.

(3) The request for a loan shall not be approved until all producers having an interest in the collateral sign the note and security agreement and CCC approves such note and security agreement.

(b) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount and charges plus interest shall be established. CCC shall:

(1) Inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title; and

(2) If the producer delivers the loan collateral in accordance with § 1421.22 after a claim is established:

(i) Determine the value of the settlement for such collateral in accordance with § 1421.22;

(ii) Waive interest on the loan amount that accrued before the establishment of the claim with respect to the settlement value of the quantity delivered from the date such loan proceeds were disbursed through the loan maturity date. Interest that accrues after the establishment of the claim shall not be waived; and

(iii) Reduce the outstanding claim amount arising from the loan by the amount of the settlement value of the quantity delivered plus the amount of interest that was waived.

§ 1421.7 Adjustment of basic loan rates.

(a) Basic loan rates for a commodity may be established on a State, regional, or county basis and may be adjusted by CCC to reflect quality and location applicable to the commodity and as otherwise provided in this section.

(b) The basic loan rates for the wheat, corn, barley, oats, grain sorghum, rice, peanuts, soybean, canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed crops will be determined by CCC and made available at State and county offices.

(c)(1) With respect to all commodities except peanuts and rice, warehouse-stored loans shall be disbursed at levels based on the basic county loan rate for the county where the commodity is stored, adjusted for the schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to rice, warehouse-stored loans shall be disbursed at levels based on the milling yields times the whole and broken kernel loan rates, adjusted for the schedule of discounts on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(3) With respect to commodities moved from one warehouse to another in accordance with the terms and conditions prescribed by CCC on Form CCC–699, Reconcentration Agreement and Trust Receipt, the loan rate will be adjusted to reflect the new storage location.

§ 1421.8 Approved storage.

(a) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) that is determined by CCC to be under the control of the producer and to afford safe storage of the commodity pledged as collateral for a loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements.

(b) Approved warehouse storage shall consist of:

(1) A public warehouse for which a CCC storage agreement for the commodity is in effect and that is approved by CCC for price support purposes. Such a warehouse is referred to in this subpart as an approved warehouse. The names of approved warehouses may be obtained from the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205, or from State and county offices.

(2) A warehouse operated by an approved CMA as defined in part 1425 of this chapter.

(c) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1421.29.

§ 1421.9 Warehouse receipts.

(a) Warehouse receipts tendered to CCC with respect to a loan or loan deficiency payment must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity that is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity that is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit. However, warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.20(c).

(c) If the receipt is issued for a commodity that is owned by the warehouse operator either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouse operator on the warehouse operator's commodity is invalid, the warehouse operator may offer the commodity to CCC for loan if such warehouse is licensed and operating under the U.S. Warehouse Act.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse that has a storage agreement with CCC shall indicate that the commodity is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) that properly identifies the warehouse receipt, must be issued in accordance with the Uniform Grain and Rice Storage Agreement or the U.S. Warehouse Act, as applicable, and must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The type of commodity;

(vi) The date the commodity was deposited or received;

(vii) The date to which storage has been paid or the storage start date;

(viii) Whether the commodity was received by rail, truck or barge;

(ix) The amount per bushel, pound, or hundredweight of prepaid in or out charges;

(x) The signature of the warehouse operator or the authorized agent; and

(xi) For warehouses operating under a merged warehouse code agreement (KC–385), the location and county to which the producer delivered the commodity.

(2) In addition to the information specified in paragraph (f)(1) of this section, additional commodity specific requirements shall be determined by CCC and are available at State and county offices and the Kansas City Commodity Office.

(g) If a warehouse receipt indicates that the commodity tendered for loan grades ''infested'' or ''contains excess moisture'', or both, the receipt must be accompanied by a supplemental certificate as provided in § 1421.18 in order for the commodity to be eligible for a loan. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows ''infested'' and the commodity has been conditioned to correct the infested condition, the supplemental certificate must show the same grade without the ''infested'' designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iv) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (g)(2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending.

(iv) For commodities dried or blended in accordance with paragraph (g)(2)(iii) of this section, such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage:

(A) For the following commodities, 1.3 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Barley: 14.5 percent;

(*2*) Corn: 15.5 percent;

(*3*) Grain sorghum: 14.0 percent;

(*4*) Oats; 14.0 percent;

(*5*) Rice: 14.0 percent;

(*6*) Soybeans; 14.0 percent; and

(*7*) Wheat: 13.5 percent.

(B) For the following commodities, 1.1 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Canola: 10.0 percent;

(*2*) Flaxseed: 9.0 percent;

(*3*) Mustard Seed: 10.0 percent;

(*4*) Rapeseed: 10.0 percent;

(*5*) Safflower Seed: 10.0 percent; and

(*6*) Sunflower Seed: 10.0 percent.

(h)(1) If, in accordance with paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouse operator against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts that are stored in an approved warehouse that is operating in accordance with a Uniform Grain and Rice Storage Agreement (UGRSA) may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouse operator be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) Warehouse receipts representing commodities that have been shipped by rail or by barge, must be accompanied by supplemental certificates completed in accordance with paragraph (f) of this section.

§ 1421.10 Warehouse charges.

(a) CCC-approved handling and storage rates that may be deducted from loan proceeds are available in State and county offices. Such deductions shall be based upon the entries on the warehouse receipt or supplemental certificate, but in no case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted indicating that:

(1) Storage charges through the maturity date have been prepaid; or

(2) The producer has arranged with the warehouse operator for the payment of storage charges through the maturity date and the warehouse operator enters an endorsement in substantially the following form on the warehouse receipt:

Storage arrangements have been made by the depositor of the grain covered by this receipt through (date through which storage has been provided). No lien will be asserted by the warehouse operator against CCC or any subsequent holder of the warehouse receipt for the storage charges that accrued before the specified date.

(b) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(c) For commodities delivered to CCC in settlement for a loan, CCC shall pay to the producer the warehouse charges for receiving the commodity, or in-charges. If the warehouse receipt delivered to CCC in settlement for a loan shows that such charges have been paid, CCC shall issue such payment to the producer. If the receipt shows that such charges have not been paid, the producer will assign such payment to the warehouse and CCC shall issue such payment to the warehouse for the producer's account.

§ 1421.11 Liens.

(a) The county office shall file or record, as required by State law, all security agreements that are issued with respect to commodities pledged as collateral for loans. The cost of filing and recording shall be paid for by CCC.

(b) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1421.12 Fees, charges, and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees are available in State and county offices and are shown on the note and security agreement.

(b) Interest that accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of commodity that has been redeemed in accordance with § 1421.25 at a rate that is less than the principal amount of the loan plus charges and interest.

(c) For each crop of soybeans, the producer, as defined in the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. Chapter 6301), shall remit to CCC an assessment that shall be determined at the time CCC acquires the commodity, and shall be at a rate equal to one-half of 1 percent of the amount determined in accordance with § 1421.19.

(d) Additional fees representing amounts voted on by producers for marketing or promotional fees may be deducted from loan proceeds by CCC as requested and agreed to by the governing body of such marketing or promotional fee and CCC. Deduction of such fees from amounts due producers and the payment of such fees to such governing body shall be made by CCC in a manner and at such time as determined by CCC.

§ 1421.13 [Reserved]

§ 1421.14 [Reserved]

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity pledged as collateral for a farm-stored loan. CCC shall not assume any loss in quantity or quality of the loan collateral for farm-stored loans.

§ 1421.16 Personal liability of the producers.

(a) When a producer obtains a commodity loan or requests a loan deficiency payment, the producer agrees:

(1) When signing Form CCC–666, Farm Stored Loan Quantity Certification, when applicable, Form CCC–677, Farm Storage Note and Security Agreement, and Form CCC–678, Warehouse Storage Note and Security Agreement, that the producer will not:

(i) Provide an incorrect certification of the quantity or make any fraudulent representation for the loan; or

(ii) Remove or dispose of a quantity of commodity that is collateral for a CCC farm-stored loan without prior written approval from CCC in accordance with § 1421.20;

(2) When signing Form CCC–666 LDP, Loan Deficiency Payment Application and Certification, or CCC–709, Direct Loan Deficiency Payment Agreement, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes; and

(3) That violation of the terms and conditions of the Form CCC–677, Form CCC–678, Form CCC–666 LDP, or Form CCC–709, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible.

(b) The violations referred to in paragraph (a) of this section are defined as follows:

(1) Incorrect certification is the certifying of a quantity of a commodity for the purpose of obtaining a commodity loan or a loan deficiency payment in excess of the quantity eligible for such loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments;

(2) Unauthorized removal is the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures that were designated when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the county committee in accordance with § 1421.20, if the movement of loan collateral prevents CCC from obtaining the first lien on such collateral; and

(3) Unauthorized disposition is the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the county committee in accordance with § 1421.20.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for the violations in accordance with paragraph (b) of this section. Accordingly, if the county committee determines that the producer has violated the terms and conditions of Form CCC–677, Form CCC–678, Form CCC–666 LDP, or Form CCC–709, as applicable, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan

deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity incorrectly certified or the loan quantity removed or disposed of for loan deficiency payment, the loan deficiency payment rate applicable to the loan deficiency quantity incorrectly certified, and charges, plus interest applicable to the amount repaid; and

(2) If the producer fails to pay such amount within 30 days from the date of notification, call the applicable loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee shall call the loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) if the county committee determines that:

(i) The violation occurred inadvertently, accidentally, or unintentionally; or

(ii) The producer acted to prevent spoilage of the commodity.

(2) Shall not consider the following acts as inadvertent, accidental, or unintentional:

(i) Movement of loan collateral off the farm;

(ii) Movement of loan collateral from one storage structure to another on the farm, except as provided for in § 1421.17(b)(1); and

(iii) Feeding the loan collateral.

(3) Shall furnish a copy of its determination to the State committee, and the Administrator. If the determination of the county committee is not disapproved by either the State committee or the Administrator, FSA, or a designee, within 60 calendar days from the date the determination is received, such determination shall be considered to have been approved.

(g) If, for any violation in accordance with paragraph (b) of this section, the county committee determines that CCC's interest is not or will not be protected, the county committee shall call any or all of the producer's farm-stored loans, and deny future farm-stored loans and loan deficiency payments without production evidence for 24 months after the date the violation is discovered. Depending on the severity of the violation, the county committee may deny future farm-stored loans and loan deficiency payments without production evidence for an additional 12 month period.

(h) If the county committee determines that the producer has committed a violation in accordance with paragraph (b), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative actions will be taken in accordance with paragraphs (d) or (e) of this section.

(i) If the loan is called in accordance with this section, the producer may not repay the loan at the lower of the loan repayment rate in accordance with § 1421.25 and may not utilize the provisions of part 1401 of this chapter with respect to such loan.

(j) Producers who have been refused a farm-stored loan under provisions of this section may apply for a warehouse-stored loan.

(k)(1) If a producer:

(i) Makes any fraudulent representation in obtaining a loan or loan deficiency payment, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan or loan deficiency payment;

(B) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(C) All other costs that CCC would not have incurred but for the fraudulent representation, the unauthorized disposition or movement of the loan collateral;

(D) Interest on such amounts; and

(E) Liquidated damages assessed under paragraph (c) of this section.

(2) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by:

(i) The forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts; or

(ii) By repayment of such loan at the lower loan repayment rate as prescribed in § 1421.25 and may not utilize the provisions of part 1401 of this chapter with respect to such loans.

(3) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with § 1421.20, the value of the settlement for such collateral delivered to or removed by CCC shall be determined by CCC in accordance with § 1421.22.

(l) A producer shall be personally liable for any damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(m) If the amount disbursed under a loan or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(n) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(o) In the case of joint loans or loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

(p) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) may be waived as determined by CCC.

§ 1421.17 Farm-stored commodities.

(a) The quantity of a commodity that shall be used to determine the amount of a farm-stored loan shall not exceed a percentage (the loan percentage), as established by the State committee that shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e). Farm-stored loans may be made on less than the maximum quantity eligible

for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, such reduced quantity shall be the mortgaged quantity on the note and security agreement for the commodity in a bin, crib, or lot on which the loan is made.

(1) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan.

(2) With respect to all other commodities, the State committee may establish a loan percentage that does not exceed a percentage established by CCC or may apply quality discounts to the loan rate, each year for each commodity on a Statewide basis or for specified areas within the State. Before approving a county committee request to establish a different loan percentage, or to apply quality discounts, the State committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be reduced below the maximum loan percentage or the quality discounts should be applied to the basic county loan rate to provide CCC with adequate protection. Loans disbursed based upon loan percentages previously lowered and loan rates adjusted for quality shall not be altered if conditions within the State or areas within the State change to substantiate removing such reductions; percentages established or loan rates adjusted for quality in accordance with this section shall apply only to new loans and not to outstanding loans. The factors to be considered by the State committee in determining loan percentages or the necessity to apply quality discounts shall include but are not limited to:

(i) General crop conditions;

(ii) Factors affecting quality peculiar to an area within the State; and

(iii) Climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee when authorized on an individual farm, area, or producer basis when determined to be necessary in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to:

(i) The condition or suitability of the storage structure;

(ii) The condition of the commodity;

(iii) The hazardous location of the storage structure, such as a location that exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity;

(iv) Any disagreement with respect to the quantity of the commodity to be pledged as collateral for a loan; and

(v) Such other factors that relate to the preservation or safety of the loan collateral.

(b) If an eligible quantity of a commodity except peanuts, has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless:

(1) The producer, when requesting a loan shall designate all structures that may be used for storage of the loan collateral. In such cases, the producer is not required to obtain prior written approval from the county committee before moving loan collateral from one designated structure to another designated structure. In all other instances, if the producer intends to move loan collateral from a designated structure to another undesignated structure, the producer must request prior approval from the county committee. Such approval shall be evidenced on Form CCC–687–1 and the eligible or ineligible commodity must be measured by a representative of the county office, at the producer's expense, before commingling; or

(2) The producer has made a certification with respect to the acreage planted to the commodity that is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production and purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county office at the producer's expense, before commingling. Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(c) Upon request by the producer before transfer, the county committee may approve the transfer of a quantity of a commodity that is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed 110 percent of the loan quantity transferred from the farm-stored loan.

(2) Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse-stored loan shall be the maturity date applicable to the farm-stored loan that was transferred.

(d) Upon request by the producer before the transfer, the county committee may approve the transfer of a warehouse-stored loan or part thereof to a farm-stored loan at any time during the loan period. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the farm-stored loan shall be the maturity date applicable to the warehouse-stored loan that was transferred.

(e) The quantity of a commodity pledged as security for a farm-stored loan or for which a loan deficiency payment is requested may be determined on the basis of the quantity of the commodity that an eligible producer certifies in writing on Form CCC–666 for a loan and Form CCC–666 LDP or CCC–709, as applicable, for a loan deficiency payment, is eligible to be pledged as collateral and is otherwise available for loan or loan deficiency payment purposes.

(f) If the county committee determines, by measurement or otherwise, that the actual quantity serving as collateral for a loan is less than the loan quantity, the county committee shall take the actions specified in § 1421.16.

§ 1421.18 Warehouse-stored loans.

(a) The quantity of a commodity that may be pledged as collateral for a loan shall be the quantity of any eligible commodity delivered to CCC for storage at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b)) To be eligible to be pledged as collateral for a loan, the commodity must not be Sample Grade and must meet the requirements of § 1421.5 and the commodity eligibility requirements, as determined by CCC. These

requirements are available at State and county offices.

§ 1421.19 Liquidation of loans.

(a) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral without any further action by the producer. With respect to farm-stored loans, the producer may, as CCC determines, deliver the collateral for such loan in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of 110 percent of the outstanding farm-stored loan quantity. If a quantity in excess of 110 percent of the outstanding farm-stored loan quantity is shown on the warehouse receipt or other documents, the producer shall provide replacement warehouse receipts and delivery documents. If the warehouse receipt and such other documents applicable to the settlement are not replaced showing only the quantity eligible for delivery, CCC shall provide for such corrected documents and apply charges for such service, if any, to the producer's account as charges for settlement on the loan.

(b) If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office that disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC–691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this chapter.

(c) If, either before or after maturity, the commodity is going out of condition or is in danger of going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that the commodity is going out of condition or is in danger of going out of condition and the commodity cannot be satisfactorily conditioned by the producer and delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(d) If the producer loses control of the storage structure, or if there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm, the commodity may be delivered before the maturity date of the loan upon prior approval of the county committee in accordance with paragraph (a). Settlement will be made with the producer as provided in § 1421.22.

§ 1421.20 Release of the commodity pledged as collateral for a loan.

(a) A producer, when requesting a loan shall designate specific storage structures on Form CCC–677, in accordance with § 1421.17(b)(1). The producer is not required to request prior approval before moving loan collateral between such designated structures. Movement of loan collateral to any other structures not designated on CCC–677, or the disposal of such loan collateral without prior written approval of the county committee, shall subject the producer to the administrative actions specified in § 1421.16. A producer may at any time obtain the release, in accordance with this section, of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released:

(1) The principal amount of the loan that is outstanding and charges plus interest; or

(2) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. The producer may request and CCC may approve removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan before such removal does not exceed the maximum loan value of the quantity of the commodity remaining in storage after such removal. When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, such producer may not repay the loan at the rate that is less than the loan rate determined in accordance with § 1421.25(a)(1)(ii) or (b)(2).

(b) CCC may allow a producer to establish a loan repayment rate determined in accordance with § 1421.25 (a)(1)(ii) or (b)(2) on Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, provided the producer complies with all terms and conditions set forth on Form CCC–681–1. If a producer fails to repay a loan within the time period prescribed by CCC in accordance with the terms and conditions of Form CCC–681–1 and the commodity pledged as collateral for such loan has been delivered to a buyer in accordance with Form CCC–681–1, such producer may not repay the loan at the rate that is less than the loan rate determined in accordance with § 1421.25 (a)(1)(ii) or (b)(2).

(c)(1) The producer may arrange with the county office for the release of all or part of the commodity that is pledged as collateral for a warehouse-stored loan at or before the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC:

(i) The principal amount of the loan and charges plus interest; or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Warehouse receipts redeemed by repayment of the loan shall be released only to the producer. However, such receipts may be released to persons designated in a written authorization that is filed with the county office by the producer within 15 days before the date of repayment.

(2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouse operator, CCC may, during the loan period, approve the reconcentration in

another CCC-approved warehouse of all or part of a commodity that is pledged as collateral for a warehouse-stored loan. Any such approval shall be subject to the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt.

(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:

(i) The principal amount of the loan and charges plus interest and applicable charges; or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25.

(d) The note and security agreement shall not be released until the loan has been satisfied in full.

(e) If the commodity is moved on a non-workday from storage without obtaining prior approval to move such commodity, such removal shall constitute unauthorized removal or disposition, as applicable, of such commodity unless the producer notifies the county office the next workday that such commodity has been moved and such movement is approved by CCC.

§ 1421.21 [Reserved]

§ 1421.22 Settlement.

(a) The value of the settlement of loans shall be made by CCC on the following basis:

(1) With respect to nonrecourse loans, the schedule of premiums and discounts for the commodity:

(i) If the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If the value of the collateral at settlement is greater than the amount due, such excess shall be retained by CCC and CCC shall have no obligation to pay such amount to any party.

(2) With respect to recourse loans, the proceeds from the sale of the commodity:

(i) If the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If the proceeds received from the sale of the commodity are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the commodity, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

(3) If CCC sells the commodity described in paragraph (a)(1) or (a)(2) in settlement of the loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale. CCC may deduct such amount from the sales proceeds.

(b) Settlements made by CCC with respect to eligible commodities that are acquired by CCC and that are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(c)(1) All eligible commodities that are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(2) With respect to all commodities, except peanuts, that are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic loan rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 15 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut loan rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, a loan shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with part 729 of this title.

(iv) The loan rate for additional peanuts shall be used for all peanuts that do not grade Segregation 1 at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the under-marketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates.

(d) A producer may be required to retain and store the commodity that is pledged as collateral for a loan for a period of 60 days after the maturity date of a loan without any cost to CCC if CCC is unable to take delivery of the commodity. If CCC is unable to take delivery of the commodity within the 60-day period after the loan maturity date, the producer shall be paid a storage payment upon delivery of the commodity to CCC. The storage payment shall be computed at the storage rate stated in the applicable CCC storage agreement for the commodity in effect at the delivery point where the producer delivers the commodity. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after such maturity date and extend through the earlier of:

(1) The final date of actual delivery; or

(2) The final date for delivery as specified in the delivery instructions issued to the producer by the county office.

(e) When a producer is directed by the county office to haul the commodity for delivery, except aromatic rice, a greater distance than would have been necessary to make delivery to the producer's customary delivery point, as determined by CCC, the producer will be allowed compensation, as determined by the State committee at a

rate not to exceed the common carrier truck rate or the rate available from local truckers, for hauling the eligible commodity the additional distance. In determining the rate of payment for excess hauling, the State committee may establish reasonable mileage minimums below which producers will not receive compensation for hauling.

(f)(1) Producers may request trackloading for loan collateral where approved warehouse space is not available locally or where KCCO determines that it would be to the benefit of CCC. Where local weighing facilities are not available or when requested by producers, destination weights may be used for settlement purposes. All producers loading in the same car must sign an agreement stating the percentage share of the total quantity to be credited to each. When requested by producers before delivery of the commodity, settlement may be made on the basis of destination grades. Such destination grade determination for a car shall be applied to the entire quantity of a commodity loaded into the same car, regardless of the grade or quality of a commodity loaded into the car by any producer.

(2) A trackloading payment of 19 cents per bushel (or 31.66 cents per hundredweight in the case of sorghum, oilseeds, and rice, excluding aromatic rice) shall be made to the producer on an eligible commodity delivered to CCC under this subsection.

(g) If a farm-stored commodity is delivered in advance of the applicable loan maturity date as provided in § 1421.19, a deduction for storage charges shall be made. The deduction shall be made for the period from the date of delivery to the applicable maturity date for the commodity. Such deduction shall be at the rate charged by the warehouse to which the commodity was delivered. No deduction for storage charges shall be made for early delivery of a farm-stored commodity if the loan maturity date is accelerated by CCC under a general acceleration of the maturity date in a particular area.

(h) A refund of warehouse storage charges will be made by CCC to the producer if the maturity date of a warehouse storage loan is accelerated by CCC for reasons other than any wrongful act or omission on the part of the producer, and the commodity is not redeemed. The amount of the storage charges to be refunded shall be computed at the lesser of the UGRSA rate or the rate prepaid by the producer for the period of unearned storage.

(i) If a warehouse charges the producer for either the receiving charges or the receiving and loading out charges on an eligible commodity in an approved warehouse, the producer shall, upon delivery to CCC of warehouse receipts representing the commodity stored in such warehouse, be reimbursed or given credit by the county office for such prepaid charges at the lesser of the UGRSA rate or the rate prepaid by the producer. The producer must furnish to the county office, written evidence signed by the warehouse operator that such charges have been paid.

§ 1421.23 Foreclosure.

(a) Upon maturity and nonpayment of a warehouse-stored loan, title to the unredeemed collateral securing the loan shall immediately vest in CCC. Upon maturity and nonpayment of farm-stored loan, title to the unredeemed collateral securing the loan shall vest in CCC upon demand. When CCC acquires title to the unredeemed collateral, CCC shall have no obligation to pay for any market value that such collateral may have in excess of the loan indebtedness, (the unpaid amount of the note and charges plus interest).

(b) If the total amount due on a farm-stored loan (the unpaid amount of the note and charges, plus interest) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. Any such disposition may also be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity at either a public or private sale.

(c) If a farm-stored commodity removed by CCC from storage is sold, the value of the settlement for the commodity shall be determined according to § 1421.22. If a deficiency exists, the amount of the deficiency may be setoff from any payment that would otherwise be due the producer from CCC or any other agency of the United States.

§ 1421.24 Protein determinations.

(a) With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC that is stored in an approved warehouse, producers must obtain official protein content determinations or, if determined acceptable by CCC, protein content determinations arrived at by mutual agreement between the producer and the warehouse operator. Costs of such determinations shall not be paid by CCC.

(b) With respect to farm-stored wheat, the basic loan rate shall not be adjusted to reflect the protein content.

§ 1421.25 Loan repayments.

(a) Rice market repayments.

(1) A producer may repay a nonrecourse loan for a 1996 through 2002 crop of rice at a rate that is the lesser of:

(i) The loan rate and charges, plus interest determined for a crop; or

(ii) The prevailing world market price, as determined by CCC.

(2) The prevailing world market price for a class of rice shall be determined by the CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and shall be expressed in U.S. equivalent values f.o.b. vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2, 4 percent broken kernels, long grain milled rice;

(ii) U.S. grade No. 2, 4 percent broken kernels, medium grain milled rice; and

(iii) U.S. grade No. 2, 4 percent broken kernels, short grain milled rice.

(3) Export transactions involving rice and all other related market information will be monitored on a continuous basis for the purposes of paragraph (2). Relevant information may be obtained for this purpose from U.S. Department of Agriculture field reports, international organizations, public or private research entities, international rice brokers, and any other source of reliable information.

(4) The prevailing world market price for a class of rice adjusted to U.S. quality and location (the adjusted world price (AWP)), that is determined in accordance with paragraph (5), shall be applicable to the provisions in this section.

(5) The AWP for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined in accordance with paragraphs (a) (2) and (3) and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice shall be adjusted to reflect an f.o.b. mill position by deducting from such calculated price an amount that is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to f.o.b. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking changes, storage, and administrative costs.

(ii) The price determined in accordance with paragraph (a)(5)(i) shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the world value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the world market value of such broken kernels. The world market value of broken kernels shall be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

(iii) The price determined in accordance with (a)(5)(ii) shall be adjusted to reflect the per pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96% per hundredweight).

(iv) The price determined in accordance with paragraph (a)(5)(iii) shall be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined in accordance with paragraph (a)(5)(iv) shall be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(*1*) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(*2*) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated world market value of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice;

(B) Deducting from such price:

(*1*) An estimated cost of milling rough rice; and

(*2*) An estimated cost of transporting rough rice from farm to mill locations.

(vi) The price determined in accordance with paragraph (a)(5)(v) may be adjusted to a whole kernel loan rate basis by deducting the estimated world market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(6)(i) The adjusted world price for each class for rice, loan rate basis, shall be determined by CCC and shall be announced, to the extent practicable, on or after 3 p.m. eastern time each Tuesday, but may be announced more frequently, as determined by CCC, continuing through the later of:

(A) The last Tuesday of July 2003; or

(B) The last Tuesday of the latest month the 2002-crop rice loans mature.

(ii) In the event that Tuesday is a non-workday, the determination will be made on the next workday, on or after 3 p.m. eastern time.

(iii) The announced prices will be effective upon announcement and will remain in effect for a period as announced by the CCC.

(7) Notwithstanding any other provision of this section, on the day of the announcement of the adjusted world price, between 2 p.m. eastern time and the time of the world price announcement, CCC will not accept repayments of rice loans at a world market price level not previously locked-in, and applications for lock-in of a rice loan repayment rate.

(b) For 1996 through 2002 crops of barley, corn, grain sorghum, oats, wheat, and oilseeds, a producer may repay a nonrecourse loan at a rate that is the lesser of:

(1) The loan rate and charges, plus interest determined for such crop; or

(2) The alternative repayment rate for barley, corn, grain sorghum, oats, wheat, and oilseeds.

(c) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the previous day's market prices at appropriate U.S. terminal markets as determined by CCC, adjusted to reflect quality and location for each crop of a commodity as follows:

(1) On a weekly basis in each county for oilseeds, except soybeans; and

(2) On a daily basis in each county for barley, corn, grain sorghum, oats, soybeans, and wheat.

§ 1421.26 Transfer of farm-stored loan to warehouse-stored association loan.

Producers may deliver peanuts under a farm-stored loan to the association and obtain loan advances on such peanuts with the prior approval of the county office anytime on or before January 31 following the calendar year in which the crop was grown. Association advances shall be payable jointly to the producer and the CCC and shall be used to settle the farm-stored loan.

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) Producer-handlers may, at any time before loan maturity, forfeit their additional peanuts to CCC and immediately repurchase such peanuts from CCC by paying the amount necessary under the following sales policies:

(1) For unrestricted use, at a price determined by CCC but, for the applicable type, not less than 105 percent of the quota loan rate, if purchased before December 31 of the calendar year in which the crop was grown, and at not less than 107 percent of the quota loan rate, if purchased after December 31 of the calendar year in which the crop was grown;

(2) For edible export, at a price determined by CCC but not less than any minimum sales price determined and announced by CCC;

(3) The 1996 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton; and

(4) For crushing (either domestic or export), at a price determined by CCC but not less than the additional loan rate for the applicable type.

(b) For purchases on or before January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Loans will be settled at the county office, and amounts collected in excess of that necessary to settle loans will be remitted to the association for the respective area. The association will credit such amounts to the appropriate loan pool. The producer should be listed as a participant in the loan pool for the purpose of determining and distributing net gains from the loan pool.

(c) For purchases after January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Any amount collected in excess of the loan indebtedness shall accrue to CCC.

§ 1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.

(a)(1) Each producer-handler shall maintain records as required in part 1446 of this chapter for all additional peanuts that are purchased and sold for which an ASCS–1007, Inspection

Certificate and Sales Memorandum, is issued.

(2) The following records shall be maintained for all peanuts purchased from CCC that are not inspected. Each producer-handler shall maintain records that show all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, and to whom sold. Records shall be maintained in such a manner that will enable the county office to readily reconcile quantities sold with all peanuts produced by the producer. All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

(b)(1) The county office shall inspect and account for all additional peanuts pledged as collateral for a loan as determined necessary by the county committee.

(2) The county office shall supervise the disposition of all additional peanuts purchased for use as seed and not inspected. The identical peanuts pledged as collateral for a loan must be disposed of and the producer must account for all peanuts that were under additional loan. The producer-handler shall request a county office representative to supervise the disposition of the peanuts and shall give the county office at least 3 working days notice of the date of such disposition. The county office shall determine the extent to which supervision is needed.

(3) With respect to additional peanuts on which ASCS–1007 is issued, the producer-handler shall be subject to all provisions in part 1446 of this chapter relating to the disposition of additional peanuts.

(c) The producer-handler shall pay all costs of supervision, as determined by the county committee for county office supervision when county office supervision is completed, and or determined by the association for peanuts supervised by association representatives when association supervision is completed.

(d) The producer-handler is subject to penalties as provided in part 1446 of this chapter with respect to any peanuts purchased in accordance with § 1421.27.

§ 1421.29 Loan deficiency payments.

(a) CCC will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year.

(b) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans in accordance with this part;

(2) Agree to forego obtaining such loans;

(3) File and request payment on Form CCC–666 LDP, unless the producer enters into an agreement according to paragraph (h), for a quantity of an eligible commodity; and

(4) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the loan rate for the crop exceeds the rate at which CCC has announced that producers may repay their loans in accordance with § 1421.25. Such rate shall be the amount determined on the day the producer submits a completed request for a loan deficiency payment to the county office. When such request is for rice and the request provides that the loan deficiency payment rate shall be based on the date of delivery, and the documentation of delivery indicates the rice was delivered after 3 p.m. eastern time, the loan deficiency payment rate in effect after 3 p.m. eastern time of the delivery date shall be used. In all other cases for rice where the loan deficiency payment rate is based on the delivery date, the payment rate in effect at 12:00:01 a.m. eastern time of the delivery date shall be used.

(d) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (c), by the quantity of the crop the producer is eligible to pledge as collateral for a nonrecourse loan for which the loan deficiency payment is requested.

(e) The total amount of loan deficiency payment a producer may receive is limited in accordance with the regulations at part 1400 of this chapter.

(f) CCC will make the loan deficiency payment in accordance with paragraph (d). Notwithstanding any provisions in this part, a loan deficiency payment may be based on 100 percent of the net eligible quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided for such commodity. If such production evidence is provided, CCC shall limit such increase in loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

(g) Notwithstanding any other provision of this section, on the day of the announcement of the adjusted world price, applications for loan deficiency payments for rice that specify the payment rate will not be accepted between 2 p.m. eastern time and the time of the world price announcement.

(h) If the producer enters into an agreement with CCC on or before the date of harvesting a quantity of an eligible commodity and the producer has the beneficial interest in such quantity as specified in accordance with § 1421.5(c) on the date the commodity was harvested, the loan deficiency payment rate applicable to such commodity would be the loan deficiency payment rate based on the date the commodity was delivered to the processor, buyer, warehouse, or CMA. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with § 1421.5.

§ 1421.30 Death, incompetency, or disappearance.

In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan or loan deficiency payment, payment shall, upon proper application to the county office that made the loan or loan deficiency payment, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title.

§ 1421.31 Recourse loans.

(a) CCC shall make recourse loans available to eligible producers of high moisture corn and high moisture grain sorghum. Repayment of such recourse loans shall be in accordance with the terms and conditions set forth by CCC.

(b) CCC may make recourse loans available to eligible producers with respect to commodities not specified in paragraph (a). Repayment of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

(c) The value of the collateral for settlements described in paragraphs (a) and (b) shall be determined by CCC according to § 1421.22.

§ 1421.32 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less that are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

Subpart—Regulations Governing the Wheat and Feed Grain Farmer-Owned Reserve Program for 1990 through 1995 Crops

§ 1421.200 Administration.

The Wheat and Feed Grain Farmer Owned Reserve (FOR) Program was not reauthorized by Congress for the 1996 crop. Effective for the 1990 through 1995 crops, the regulations setting forth the applicable terms and conditions for the Wheat and Feed Grain Farmer Owned Reserve (FOR) Program can be found in the regulations published in 7 CFR Part 1421 as of January 1, 1996, shall be applicable for any outstanding FOR loans on or after April 4, 1996.

Subpart—Rice Marketing Certificate Program [Removed]

21. The subpart consisting of §§ 1421.320 through 1421.324 is removed.

* * * * *

22. Part 1425 is revised to read as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.

Authority: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b, 714c, and 714j.

§ 1425.1 Applicability.

This part sets forth the terms and conditions that a Cooperative Marketing Association (CMA) must meet to obtain from CCC marketing assistance loans (loans) and loan deficiency payments on behalf of its members for the 1996 and subsequent crops of a commodity. A CMA meeting such terms and conditions may obtain loans and loan deficiency payments with respect to any crop of an eligible commodity for which a loan and loan deficiency payment program is in effect.

§ 1425.2 Administration.

On behalf of CCC, the FSA will administer the provisions of this part under the general direction and supervision of the Deputy Administrator. In the field, the provisions of this part will be administered by the State and county FSA committees.

§ 1425.3 Definitions.

The following definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title and parts 1421 and 1427 of this chapter shall also be applicable except where those definitions conflict with the definitions in this section.

Active member means a member who has utilized the services offered by a CMA 1 of the 3 preceding CMA fiscal years or such shorter period as may be provided in the CMA's articles of incorporation or bylaws.

Approved cooperative marketing association means a CMA that has been approved by CCC to participate in loan and loan deficiency payment programs authorized with respect to one or more authorized commodities.

Authorized commodity means those commodities for which an approved CMA may apply for loans, including barley, canola, corn, cotton, flaxseed, mustard seed, oats, rapeseed, rice, safflower, seed cotton, sorghum, soybeans, sunflower seed, and wheat.

Eligible commodity means a commodity that meets the eligibility requirements applicable to such commodity set forth in Chapter XIV of this title that is delivered to, or that is acquired by, a CMA.

Member means a person who has fully paid for the membership stock or earned equity credits; was accepted by the CMA; and is entitled to all membership rights including voting and holding office except where the law of the State in which the CMA is incorporated provides for stock subscribers as members but does not allow them to hold office.

§ 1425.4 Approval.

(a) For a CMA to participate in a loan program with respect to the 1996 through 2002 crops of authorized commodities, a CMA must submit an application for approval with respect to such authorized commodities to CCC. An application must include:

(1) A completed Form CCC–846;

(2) The latest financial audit of the CMA including any accompanying notes, schedules, or exhibits, certified by a certified public accountant from the books of original entry as fairly representing the financial condition of the CMA;

(3) A copy of the articles of incorporation or articles of association, bylaws, all marketing agreements for eligible commodities, and any other document that is requested by CCC with respect to the CMA's methods of conducting business that an official of the CMA has certified as being current;

(4) A conflict of interest statement (Form CCC–846–2) from each director, officer, and principal employee;

(5) Resolutions made by the CMA board of directors that provide that the CMA will abide by provisions of this part and the nondiscrimination provisions thereof;

(6) A statement of any CMA transactions that have occurred either in the year before the initial application for approval is submitted, or are contemplated by the CMA as provided in § 1425.12;

(7) A detailed description of the method by which proceeds from a pool of eligible commodities for which loans are obtained will be distributed as provided for in § 1425.18; and

(8) Other information requested by CCC concerning the organizational, operational, financial or any other aspect of the CMA determined by CCC to be necessary to act upon the application for approval.

(b) An approved CMA must submit, on an annual basis, the following information to CCC:

(1) A completed Form CCC–846–1;

(2) The CMA's latest complete financial audit;

(3) The numbers of active and inactive members;

(4) A statement showing the allocated equity in the CMA owned by active members, inactive members, and others, and the un-allocated equity in the CMA;

(5) The names of any members who own in excess of 10 percent of the equity of the CMA and the amount owned by each;

(6) The quantity of each eligible commodity delivered to the CMA for marketing and the portion of such commodities received from active members during the prior year;

(7) The quantity of each eligible commodity tendered by the CMA to CCC as security for a loan and the quantity of such commodities redeemed during the prior year;

(8) The quantity of each commodity tendered to CCC for loan during the prior year; and

(9) A statement of any CMA transactions that either have occurred in the CMA's prior fiscal year of operations or are contemplated to occur in the CMA's current fiscal year as provided for in § 1425.12.

(c) An approved CMA shall promptly furnish to CCC:

(1) Any changes in the articles of incorporation, bylaws, and marketing agreements of the CMA;

(2) Any resolutions affecting loan operations;

(3) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.12(d);

(4) Any change in pooling operations with an explanation of the change and why such change was necessary; and

(5) Additional information as may be requested by CCC at any time with respect to the continued approval by CCC of the CMA.

(d) Approved CMA's must submit revised applications as required by this section every 5 years, or more often if CCC requests.

(e) CMA's applying for approval to participate in the loan program for cotton shall execute Form CCC-Cotton G, Cotton Cooperative Loan Agreement, with CCC.

§ 1425.5 Confidentiality.

Information submitted to CCC with respect to trade secrets, financial or commercial operations, or information concerning the financial condition of a CMA, whether for initial approval or continued approval, shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosures are necessary for the conduct of a loan program or such information is required to be disclosed by law.

§ 1425.6 Approved CMA's.

(a) CCC shall, in accordance with the provisions of this part, approve a CMA to obtain loans and loan deficiency payments.

(b) CCC may approve a CMA to participate in a loan program with respect to the 1996 through 2002 crop of a commodity as:

(1) Unconditionally approved; or

(2) Conditionally approved.

(c)(1) A CMA may be conditionally approved if CCC determines that it has substantially met all the requirements of this part, and the failure to meet the remaining requirements is due to reasons beyond the control of the CMA and not due to the CMA's negligence; and

(2) Such CMA must agree in writing to meet all requirements for approval set forth in this part within the time period specified by CCC. When a CMA can only comply with the regulations by amending its articles of incorporation or bylaws at a membership meeting, CCC may accept a board of directors' resolution agreeing to recommend to the members, at the next meeting of the members, the required changes to the articles of incorporation or bylaws as compliance with the requirements for approval for purposes of this section. Board resolutions in which the CMA agrees to comply with other provisions of this part may be accepted by CCC as compliance with the requirements for approval for purposes of this section.

(d) A CMA is approved to participate in a loan program for an authorized commodity until such time as the CMA's approval is suspended or terminated by CCC.

§ 1425.7 Suspension and termination of approval.

(a) An approved CMA may be suspended by CCC from further participation in a loan or loan deficiency payment program if CCC determines that the CMA or a member CMA, as specified in § 1425.19:

(1) Has not operated in accordance with the conditions specified in such CMA's application for approval;

(2) Has not complied with applicable regulations; or

(3) Has failed to correct deficiencies noted during an administrative review or an audit of the CMA's operations with respect to a loan program.

(b) Such suspension may be lifted upon the receipt of documents indicating that the CMA has complied with all requirements for approval. If such documents are not received within 1 year from the date of the suspension, the CMA's approval for participation in a loan program will terminate automatically.

(c)(1) CCC may terminate the approval of the CMA's ability to pledge commodities as collateral for CCC loans or loan deficiency payments by giving the CMA written notice of such termination.

(2) An approved CMA may at anytime, upon written notice to CCC, voluntarily terminate the CMA's participation in a loan program, provided that the CMA does not have any outstanding loans at the time of voluntary termination.

(d) Ten days after the date CCC suspends or terminates the approval of a CMA to participate in a loan program or anytime thereafter, CCC may, on demand, call all outstanding CCC loans made to the CMA. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

§ 1425.8 Ownership and control.

(a) All approved CMA's must be owned and controlled by active members of the CMA.

(b) The CMA must establish that its active members own more than 50 percent of the allocated equity of the CMA. Such ownership equity shall be in the form of stock, revolving fund certificates, capital, retains book credits, or other capital interests issued by the CMA. In determining the requisite equity held by active members, the following shall be deducted from the amount of equity allocated to each active member:

(1) The allocated equity held by any active member who owns more than 10 percent of the CMA's total equity; and

(2) The allocated equity of any active member that has acquired equity as a result of a loan from the CMA unless the member is obligated to repay the loan within 1 year.

(c) The organization and operation of the CMA shall be under the control of its active members. A CMA shall be considered to be under the control of its active members if more than 50 percent of its membership consists of active members.

(d) All directors must be:

(1) Active members of the CMA;

(2) Representatives of active members who are also employed as a farm manager or its equivalent (including an officer of a CMA or a partner in partnership); or

(3) Officers, employees, or active members of an active member CMA; and

(4) A director shall be nominated and elected by members except when selected to fill the unexpired term of a director so elected.

(e) An applicant or an approved CMA not under the ownership or control, or both, of its active members, may be approved by CCC to participate in a loan program if the CMA is able to establish that, by retiring the equity of its inactive members or by obtaining new members, the CMA can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Charter and bylaw provisions.

(a) The articles of incorporation, articles of association, or the bylaws of the CMA shall comply with each of the following requirements:

(1) The CMA shall hold an annual meeting of members or delegates at one or more locations within its operating area that will afford a reasonable opportunity for all members or their delegates to attend and participate;

(2) The CMA shall give written notice to each member or delegate, of the time, place, and purpose of all regular and special meetings of members or delegates; and

(3) The CMA shall admit to membership every applicant who applies for admission for the purpose of participating in the activities of the CMA, and is eligible for membership under the statute incorporating the CMA.

(b) A CMA may refuse membership to an applicant whose admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the CMA.

(c)(1) Nominations for election of delegates and directors shall be made by members.

(2) Nominations for officers shall be made by elected directors or by members when nomination by members is authorized in the CMA's articles of incorporation or bylaws.

(3) Nominations may be made by balloting, nominating committee, petition of members, or from the floor, provided that nominations from the floor shall be requested in addition to nominations made by a nominating committee or by petition.

(d) The election of directors, delegates, and officers shall be by ballot when there are two or more nominees for a position, or there are more nominees than there are positions to be filled.

(e) Each member of the CMA shall have a single vote except that CCC may approve another voting method that will adequately protect the ownership and control interests of the members of the CMA.

(f) Voting by proxy shall be prohibited, except if a CMA:

(1) Determines that voting by proxy is necessary to amend the CMA's articles of incorporation, articles of association, or bylaws; and

(2) Establishes, to the satisfaction of CCC, that the law of the State in which the CMA is incorporated permits voting by proxy, but does not permit members to vote by mail, with respect to such issue.

(g) Each member of the CMA shall annually be given a summary financial statement of the CMA that is based on an annual audit conducted by a certified public accountant.

§ 1425.10 Financial condition.

(a) An approved CMA must be financially able to make financial advances to its members and to market commodities of such members.

(b) The factors that will be considered in determining the financial condition of a CMA include:

(1) The ability of the CMA to meet current obligations, including the expenses of marketing the commodities on behalf of its members; and

(2) The ability of the CMA to make advance payments to its members, either from its own funds or through arrangements with financial or other institutions.

(c) The CMA shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in table 1) multiplied by the total number of such units of commodity for which the CMA is approved, or requesting approval, to participate in loan programs and handled by the CMA during the preceding marketing year, or, if the CMA is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year.

(1) If the amount of the net worth of the CMA is between 34 and 99 percent of the amount computed in accordance with paragraph (c), and the CMA is determined by CCC to be otherwise financially sound, CCC may determine that such CMA meets the requirements of this section. Such a determination by CCC may be made if:

(i) The board of directors of the CMA agrees to retain capital in the amount set forth in table 2 with respect to each unit of the commodity delivered to the CMA until the net worth of the CMA is at least equal to the amount computed in accordance with paragraph (c), and

(ii) The CMA agrees to deduct from pool proceeds the full amount of the estimated expenses of handling the commodities received by the CMA.

(2) The failure to carry out such capital retention agreements shall be grounds for suspending a CMA approval.

Table 1

Commodity	Unit	Amount per unit
Barley	Bushel	0.13
Canola	Hundredweight	0.62
Corn	Bushel	0.13
Cotton	Bale	6.40
Flaxseed	Hundredweight	0.62
Mustard Seed	Hundredweight	0.62
Oats	Bushel	0.13
Rapeseed	Hundredweight	0.62
Rice	Hundredweight	0.52
Safflower	Hundredweight	0.62
Seed Cotton (lint basis).	Pound	0.008
Sorghum	Hundredweight	0.19
Soybeans	Bushel	0.43
Sunflower Seed	Hundredweight	0.62
Wheat	Bushel	0.15

Table 2

Commodity	Unit	Amount per unit
Barley	Bushel	0.07
Canola	Hundredweight	0.32
Corn	Bushel	0.07
Cotton	Bale	3.20
Flaxseed	Hundredweight	0.32
Mustard Seed	Hundredweight	0.32
Oats	Bushel	0.07
Rapeseed	Hundredweight	0.32
Rice	Hundredweight	0.26
Safflower	Hundredweight	0.32
Seed Cotton (lint basis).	Pound	0.004
Sorghum	Hundredweight	0.10
Soybeans	Bushel	0.22
Sunflower Seed	Hundredweight	0.32
Wheat	Bushel	0.08

(d) For the purposes of paragraphs (b) and (c), the net worth of the CMA shall be reduced by the value of the amount of any assets or funds that are not reflected as a liability of the CMA in the financial statement of the CMA and that are:

(1) Pledged as security, deposited, or otherwise used to secure or guarantee any indebtedness of the CMA; or

(2) Deposited in a restricted account or otherwise used to guarantee the performance of an obligation of the CMA.

§ 1425.11 Operations.

(a) A CMA shall establish to the satisfaction of CCC, with respect to the commodity for which approval is requested, that the CMA is so organized and staffed by individuals employed directly by the CMA that it is able to perform contracts with its members and to provide an effective marketing operation for its members.

(b) If a CMA cannot satisfactorily establish that it can provide an effective marketing operation for its members, the CMA may enter into a marketing agreement with another CMA to market the commodity only if:

(1) Such marketing agreement is permitted by law;

(2) The articles of incorporation, articles of association, or bylaws of the CMA acquiring the marketing service and the marketing agreement such CMA has entered into with its members

provide the necessary authority to enter into such agreement;

(3) The CMA acquiring the marketing service is a member of the CMA that will provide the marketing service; and

(4) The CMA that will provide the marketing service has been approved under this part to obtain loans for such commodity.

(c) Any marketing agreement entered into by a CMA in accordance with the provisions of paragraph (b), must, as determined by CCC:

(1) Adequately protect the ownership and control interests of the CMA members;

(2) Be in the best interest of the members of the CMA acquiring the service; and

(3) Require that all proceeds from the marketing operation be distributed as provided in § 1425.18.

§ 1425.12 Conflict of interest.

(a) The CMA shall not be approved for participation in loan programs unless CCC determines that the CMA's transactions, if any, that are of a kind described in this section, have not operated and will not operate to the detriment of members of the CMA.

(b) The CMA shall submit with the initial application for approval, and with each recertification, a detailed report concerning all of the transactions of the CMA (including transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities) with the following persons that differ from transactions entered into by the CMA with its general membership:

(1) Any director, officer, or principal employee of the CMA, or any of their family members;

(2) Any partnership from which any person is entitled to receive a percentage of the gross profits;

(3) Any CMA in which any person owns stock;

(4) Any business entity from which any person receives fees for transacting business with or on behalf of the CMA; or

(5) Any business entity in which an agent, director, officer or employee of the CMA was an agent, director, officer or employee of such business entity.

(c) The CMA shall also submit a statement as to whether any transactions of the kind described in paragraph (b) are contemplated between the date of the application, or the date such information is requested to be submitted in accordance with § 1425.4, as applicable, and the end of the next marketing year for the authorized commodity. If any transactions are contemplated, the CMA shall submit a detailed explanation of such contemplated transactions and a statement of the reasons for such transactions.

(d) The CMA shall furnish information, as requested, showing the interest or relationship of its directors, officers, and principal employees and their family members with persons who engage in any business relating to a commodity for which the CMA is approved to obtain loans. Such information shall be revised to reflect any change in any such interest or relationship.

§ 1425.13 Uniform marketing agreement.

(a) The CMA must enter into a uniform marketing agreement with each member who delivers a commodity to an eligible pool for which a loan is obtained on any quantity of the commodity in such pool.

(b) A CMA may provide alternative methods of marketing commodities to its members, in addition to the methods set forth in its marketing agreement, if the terms and conditions thereof are reasonable to its members, and information concerning the use of such methods of marketing are made available to all members.

(c) An approved CMA, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for a period not to exceed 2 crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the CMA, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the CMA's membership publication or included in other written notice mailed to members.

§ 1425.14 Member business.

At least 80 percent of a crop of an authorized commodity that is acquired by, or delivered to, the CMA for marketing must be produced by its members in order for the CMA to obtain a loan for such crop. CCC may, for a period not to exceed 2 years, waive such requirement for a CMA if:

(a) The quantity of such crop acquired by the CMA for marketing, from its members, has a value greater than the value of the quantity acquired or received from nonmembers for marketing;

(b) The CMA can establish to the satisfaction of CCC that such authorization is necessary for the efficient operation of the CMA; and

(c) The CMA has a plan, approved by CCC, that CCC determines to be in the CMA members' best interest and will bring the CMA into compliance with the provisions of this section. Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.

An approved CMA shall have the authority to pledge as collateral for a loan the commodity delivered to it by its members, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the CMA.

§ 1425.16 Payment limitation.

Approved CMA's shall monitor marketing loan gains, loan deficiency payments, and other payments they receive from CCC on behalf of their members and ensure that the sum of the amounts received for each member does not exceed the member's payment limitation determined in accordance with part 1400 of this chapter.

§ 1425.17 Eligible commodity and pooling.

(a) A CMA may establish separate pools as needed for quantities of a commodity.

(b) Loans will be made available to approved CMA's with respect to a quantity of an eligible commodity included in an eligible pool as provided in paragraph (e) and the beneficial interest provisions of parts 1421 and 1427 of this chapter.

(c) A pool shall be eligible for loans if:

(1) All of the commodity included in the pool is eligible for loans, except as provided in paragraph (d);

(2) The eligible commodity in such pool was delivered to the CMA for marketing for the benefit of the members of the CMA by members who retain the right to share in the proceeds from the marketing of the commodity in accordance with § 1425.18.

(3) Except with respect to a quantity of a commodity pledged as collateral for a loan and that is redeemed within 15 work days from the date the CMA receives the proceeds from CCC, all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the CMA with respect to such commodity in accordance with § 1425.18(a).

(d) If CCC determines that a CMA has inadvertently included in a pool a quantity of commodity that is ineligible for loan because of grade, quality, bale weight or repacking in the case of cotton, or other factors, the remaining quantity of commodity shall remain eligible for loan.

(e) Loans and Loan Deficiency Payments will be available to the CMA for the quantity of a commodity stored commingled in an approved warehouse equal to the smaller of:

(1) The quantity of an eligible commodity received from members of the CMA; or

(2) the quantity of commodity that is in the CMA's inventory.

(f) The CMA must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of each class and grade pledged as loan collateral.

(g) Loans will be available to the CMA for the quantity of a farm-stored commodity that is, pursuant to such CMA marketing agreement with a member, part of the CMA's pool.

(h) Except as provided in paragraph (c)(2), loans will be available to the CMA for the quantity of the eligible commodity stored identity preserved in an approved warehouse that was received from members of the CMA and that is in the CMA's inventory at the time the commodity is pledged as collateral for a loan.

(i) Loan eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.

(j) Commodities pledged as collateral for CCC loans shall be free and clear of all liens and encumbrances based on an approved CMA's financial agreements or the CMA shall obtain a completed Form CCC–679, Lien Waiver. Approved CMA's shall not take any action to cause a lien or encumbrance to be placed on a commodity after a loan is approved.

(k) If a loan is obtained with respect to any quantity of a crop of a commodity that has been pooled, allocations by the CMA of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(l)(1) Any losses incurred by the CMA in the marketing of a crop of a commodity for which a loan has not been obtained shall not be assessed against the proceeds from the marketing of a crop of a commodity included in a pool for which a loan was obtained.

(2) Except as provided in paragraph (l)(3), losses incurred by the CMA in the marketing of a crop of a commodity included in a pool for which a loan has been obtained may not be carried forward and applied against subsequent crops of commodities included in a pool for which a loan is obtained.

(3) CCC may authorize an approved CMA to carry forward losses incurred by the CMA in the marketing of a crop of a commodity included in a pool for which a loan has been obtained when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the loan program.

(4) The authorization referred to in paragraph (l) will be approved on the basis of a plan, subject to the approval of CCC, for the carrying forward of losses submitted by an approved CMA and will be continued on the condition that the approved CMA remains in substantial compliance with the approved plan, as reflected in periodic progress reports.

(5) Factors that will be considered in determining whether to approve such a plan include, but are not limited to, the following:

(i) The stability of the membership and participation between affected pools;

(ii) the financial condition of the CMA; and

(iii) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period.

(6) The plan submitted by the CMA must include the following:

(i) A provision for notifying existing and new members of the CMA of the plan to deduct eligible pool losses from subsequent eligible pool gains; and

(ii) a procedure for maintaining necessary data and records needed to generate periodic progress reports as directed by CCC.

(7) Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan that has been approved by CCC under the criteria specified in paragraph (e)(3).

§ 1425.18 Distribution of proceeds.

(a)(1) If CCC makes available loans or loan deficiency payments with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or loan deficiency payments shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member that is included in the pool less any authorized charges for services performed or paid by the CMA that are necessary to condition the commodity or otherwise make the commodity eligible for loans or loan deficiency payments. Except with respect to commodities that are pledged as collateral for a loan and that are redeemed within 15 work days from the date the CMA receives the loan proceeds from CCC, such proceeds shall be distributed within 15 work days from such date. Loan deficiency payments received from CCC shall be distributed within 15 work days of receipt from CCC.

(2) Any advances by the CMA to its members who have a quantity of the commodity in the eligible pool for which advances are made prior to the pledging of the commodity as security for a CCC loan or used to obtain a loan deficiency payment with CCC may be credited by the CMA against the distribution required in paragraph (a)(1).

(b)(1) If loans or loan deficiency payments are obtained from CCC for any quantity of the eligible commodity in a pool, all proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member that is included in such pool.

(2) Except as provided in paragraph (b)(3), all proceeds from an eligible pool for which a loan has been obtained shall not be combined with proceeds from ineligible pools for distribution and final settlement, and the method of distribution of proceeds shall be as specified in the information provided to CCC in accordance with § 1425.4(b)(7).

(3) Sales proceeds from an eligible pool may be combined with sales proceeds from ineligible pools or other eligible pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in such pools.

(4) Pool proceeds obtained from loans made by CCC shall not be combined with proceeds from other eligible or ineligible pools.

(5) When notified by CCC that pool distributions to a member of any eligible pool must be reduced for a program year, farm, or crop, CMA shall refrain from making such pool distributions and shall, if appropriate, reimburse CCC for such distributions.

(c) If a CMA has attempted to distribute to its members a part of its equity, as defined in § 1425.8, in accordance with the articles of incorporation, articles of association or the bylaws of the CMA and has given notice of distribution both by publication and personal letter addressed to such members, the CMA may provide, to the extent permitted by

the law of the State applicable to such distribution, for reallocation of such undistributed equity to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run, such period to begin on the date the equity to be distributed was declared to be payable by the CMA;

(2) The CMA, 30 days prior to the lapse of the period of limitation specified in paragraph (c)(1), has given the affected member notice (by certified mail, return receipts requested, at the member's last known address as reflected on the books of the CMA) of the amount of equity payable to such member(s) and notice that such equity may be distributed to other members and patrons if the affected member does not make a claim for such equity within the period of limitation specified in paragraph (c)(1); and

(3) No claim for payment of the equity to be distributed has been made within the period of limitation described in paragraph (c)(1).

§ 1425.19 Member CMA's.

(a) Except as provided in paragraph (c) for a CMA to obtain loans or loan deficiency payments for any quantity of an eligible commodity delivered by a member CMA or for a CMA to obtain loans for any quantity of an eligible commodity included in the same pool with the commodity delivered by a member CMA, the CMA and such member CMA must meet the requirements of this paragraph.

(1) The eligible commodity delivered by the member CMA must be produced by the members of such member CMA.

(2) The member CMA must be authorized to:

(i) Sell the commodity;

(ii) Pledge such commodity as collateral for a loan;

(iii) Place a lien on such commodity; and

(iv) Deliver such commodity to the CMA for marketing.

(3) The CMA must either:

(i) In its articles of incorporation, articles of association, bylaws, or marketing agreement, require each such member CMA to meet the requirements of this part; or

(ii) Determine and certify annually to CCC that each such member CMA meets the requirements of this part.

(b) The CMA shall determine and certify annually to CCC that its member CMA's that are not subject to paragraph (a) are in compliance with the producer ownership, membership meeting, and voting requirements of applicable State law.

(c) An approved CMA is required to meet only the provisions contained in paragraphs (a) (1) and (2) with respect to a member CMA for whom the member CMA markets the production of the member CMA's members in accordance with § 1425.11(b).

§ 1425.20 [Reserved]

§ 1425.21 Records required.

(a) An approved CMA and its member CMA's shall maintain a record that shows the quantity of commodity that is received from each of its members and nonmembers, the date received, the eligibility status for loans of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable quality factor applies.

(b) The CMA shall maintain a record that shows each quantity of commodity that is disposed of; and, if sold, the date sold and the price received; and the date removed for processing or shipped. Except as provided in paragraph (c), inventory shall be allocated in the following manner until the entire inventory in a particular pool is depleted:

(1) Commodities that are processed. The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted at the time the commodity is withdrawn from inventory for processing.

(2) Commodities not processed. The quantity of a commodity to be shipped shall be allocated to an eligible pool, an ineligible pool, or a combination of eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

(c) Records of eligible and ineligible pool dispositions need not be maintained separately so long as sales proceeds from such pools are allocated among the pools according to the quantity and quality of commodity included.

§ 1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the approved CMA, member CMA's, and subsidiaries, shall be maintained for a period of 5 years and shall be made available to CCC for inspection and examination at all reasonable times.

(b) CCC shall have the right at any time after an application is received, to examine all books, documents, papers, and determine whether the CMA is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles association, bylaws, and agreements with producers, the representations made by the CMA in its application for approval, and, where applicable, its agreements with CCC.

§ 1425.23 Reports.

(a) Approved CMA's shall annually provide CCC with a report to applicable county FSA offices. The report shall include all eligible and ineligible commodity receipts by FSA farm number for each member.

(b) Approved CMA's shall at least annually report by commodity and by crop the marketing loan gains, loan deficiency payments, and any other CCC program payments received on behalf of each producer member.

§ 1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560–0040.

§ 1425.25 Appeals.

A CMA may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title.

PART 1427—COTTON

23. Part 1427 is amended by designating the subparts and revising the headings in the first column to read as shown in the second column;

Old subpart	New subpart
Subpart—Cotton Loan Program Regulations	Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs.
Subpart—Upland Cotton First Handler Marketing Certificate Program Regulations.	Subpart B—Regulations for the Upland Cotton First Handler Marketing Certificate Program.
Subpart—Upland Cotton User Marketing Certificate Program Regulations.	Subpart C—Regulations for the Upland Cotton User Marketing Certificate Program.

Old subpart	New subpart
Subpart—Seed Cotton Loan Program Regulations	Subpart D—Regulations for the Recourse Seed Cotton Loan Program.
Subpart—Standards for Approval of Warehouses for Cotton and Cotton Linters.	Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters.

24. The authority citation for part 1427 is revised to read as follows:

Authority: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b and 714c.

25. Subpart A is revised to read as follows:

Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs

Sec.

Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 1996 through 2002 crops of upland cotton and extra long staple cotton. These regulations set forth the terms and conditions under which the nonrecourse cotton loan program and the loan deficiency payment program shall be administered by the Commodity Credit Corporation (CCC). Additional terms and conditions shall be set forth in the note and security agreement and loan deficiency payment application which must be executed by a producer to receive loans and loan deficiency payments.

(b) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the nonrecourse cotton loan and loan deficiency payment programs are available in State and county Farm Service Agency (FSA) offices (State and county offices, respectively). The forms for use in connection with the programs in this subpart shall be prescribed by CCC.

(c) Loans and loan deficiency payments shall not be available for any cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.2 Administration.

(a) The nonrecourse loan and loan deficiency payment programs which are applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, (Administrator, FSA), or a designee and shall be carried out by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the cotton loan and loan deficiency payment programs or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the nonrecourse cotton loan or loan deficiency payment programs.

(f) A representative of CCC may execute loan note and security agreements and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, is null and void.

§ 1427.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in parts 718 of this title and 1412 of this chapter shall also be applicable.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved in accordance with part 1425 of this chapter which has executed Form CCC-Cotton G, Cotton Cooperative Loan Agreement.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton means upland cotton and extra loan staple cotton meeting the definition set forth in the definitions of ''upland cotton'' and ''extra long staple (ELS) cotton'' in this section, respectively, and excludes cotton not meeting such definitions.

Extra long staple (ELS) cotton means any of the following varieties of cotton which is produced in the United States and is ginned on a roller gin:

(1) American-Pima;

(2) Sea Island;

(3) Sealand;

(4) All other varieties of the Barbadense species of cotton, and any hybrid thereof; and

(5) Any other variety of cotton in which one or more of these varieties predominate.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loans means a nonrecourse loan executed on Form CCC—Cotton A, Cotton Producer's Note and Security Agreement.

Form G loans means a nonrecourse loan to a CMA on eligible cotton delivered to the CMA by eligible members of the CMA.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency payment proceeds;

(3) Handling reconcentration of cotton in accordance with § 1427.16;

(4) Accepting loan repayments;

(5) Handling documents involved with forfeiture of loan collateral to CCC; and

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Lint cotton means cotton which has passed through the ginning process.

Seed cotton means cotton which has not passed through the ginning process.

Servicing agent bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton which one or more of these varieties predominate.

Warehouse receipt means a receipt issued with respect to a bale of cotton by a warehouse with an existing cotton storage agreement, approved by CCC, in accordance with §§ 1427.1081 through 1427.1089, that is:

(1) A negotiable, machine card type warehouse receipt that is pre-numbered and pre-punched;

(2) An electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations which are approved by FSA or CCC to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

§ 1427.4 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, CMA, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12 and 718 of this title, and parts 1405 and 1412 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans and loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note and security agreement or loan deficiency payment application signed by the minor is co-signed by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) Two or more producers may obtain a single joint loan or loan deficiency payment with respect to the eligible cotton if the cotton is jointly owned by such producers. The cotton in a bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(e) Loans may be made to a warehouse operator who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouse operator on cotton produced by such warehouse operator only in those States where the issuance and pledge of such warehouse receipts are valid under State law.

(f) A CMA may obtain loans and loan deficiency payments on eligible cotton on behalf of their members who are eligible to receive loans or loan deficiency payments with respect to a crop of cotton. For purposes of this subpart, the term ''producer'' includes a CMA.

§ 1427.5 General eligibility requirements.

(a) To receive loans or loan deficiency payments for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested.

(1) Form A loan documents or loan deficiency payment applications must be signed by the producer and mailed or delivered to applicable county office or loan servicing agent within 15 calendar days after the producer signs such documents and within the period of loan availability. A producer, except for a CMA, must request loans and loan deficiency payments:

(i) At the county office which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced; or

(ii) From a loan servicing agent.

(2) Form G loan documents and requests for loan deficiency payments by a CMA must be signed by the CMA and delivered to CCC or the servicing agent bank within the period of loan availability.

(b) For a bale of cotton to be eligible for a loan or loan deficiency payment, the bale must:

(1) Be tendered to CCC by an eligible producer;

(2) Be in existence and in good condition at the time of disbursement of the loan or loan deficiency payment proceeds, except as provided in § 1427.23(f);

(3) Be represented by a warehouse receipt meeting the requirements of § 1427.11, except as provided in § 1427.23(a)(4);

(4) Not be false-packed, water-packed, mixed-packed, re-ginned, or repacked;

(5) Not be compressed to universal density at a warehouse where side pressure has been applied;

(6) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a loan or to obtain a loan deficiency payment;

(7) Not have been previously sold and repurchased or pledged as collateral for a CCC loan and redeemed except as provided in § 1427.172(b)(4);

(8) Not be cotton for which a loan deficiency payment has been previously made;

(9) Weigh at least 325 pounds net weight;

(10) Be packaged in materials which meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America for the applicable crop year or which are identified and approved by the Joint Cotton Industry Bale Packaging Committee as experimental packaging materials for the applicable crop year.

(i) Copies of the applicable crop year specifications for cotton bale packaging materials published by the Joint Cotton Industry Bale Packaging Committee are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 4089 A, 1400 Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday.

(ii) Information with respect to experimental packaging material may be obtained from the Joint Cotton Industry Bale Packaging Committee.

(11) Be ginned by a ginner:

(i) Who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehouse operator the tare weight; and

(ii) Who has entered into CCC–809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) and;

(12) Be production from acreage that has been reported timely in accordance with part 718 of this title.

(c) In addition to the requirements of paragraph (b), for ELS cotton the bale must:

(1) Be a Grade and staple length specified in the schedule of loan rates for ELS cotton;

(2) Not have a micronaire reading of 2.6 or less; and

(3) Not have noted on the classing record the presence of spindle twist, preparation, grass, oil, and/or other extraneous matter.

(d) In addition to the requirements of paragraph (b), for upland cotton the bale must:

(1) Have been produced on a farm with a production flexibility contract in accordance with part 1412 of this chapter;

(2) Have been graded by using a High Volume Instrument;

(3) Be a grade, staple length, and leaf specified in the schedule of premiums and discounts for grade, staple, and leaf for upland cotton;

(4) Have a strength reading greater than 18 grams per tex, rounded to whole grams;

(5) Have a micronaire specified in the schedule of micronaire premiums and discounts for upland cotton;

(6) Have a extraneous matter specified in the schedule of discounts for extraneous matter for upland cotton; and

(e)(1) To be eligible to receive loans or loan deficiency payments, a producer must have the beneficial interest in the cotton which is tendered to CCC for a loan or loan deficiency payment. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer and a former producer whom the producer tendering the cotton to CCC has succeeded had such an interest in the cotton. Cotton obtained by gift or purchase shall not be eligible to be tendered to CCC for loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan shall be eligible for loans whether succession to the cotton occurs before or after harvest as long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the cotton if the producer retains control, title, and risk of loss in the cotton, including the right to make all decisions regarding the tender of the cotton to CCC for loans or loan deficiency payments and does any or all of the following:

(i) Executes an option to purchase whether or not a payment is made by the potential buyer for such option to purchase with respect to such cotton if all other eligibility requirements are met and the option to purchase contains the following provision:

Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR part 1427, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not pay to the producer any advance payment amount to enter into such contract, except as provided in part 1425 of this chapter; or

(iii) Executes Form CCC–605, Designation of Agent. Such designation:

(A) Allows the producer to authorize an agent or subsequent agent to redeem all or a portion of the cotton pledged as collateral for a loan;

(B) Identifies the warehouse receipts for which the authorization is given;

(C) Expires upon maturity of the loan;

(D) Allows agents so designated by the producer to designate a subsequent agent by endorsement of the form by the agent;

(E) Must be presented at the time the loan is repaid at the county office or loan servicing agent where the loan originated if the agent or subsequent agent exercises any authority granted by the producer; and

(F) May be canceled by the producer by providing the custodial office a written request signed and dated by the producer showing the name of the agent, the loan number, and the bales applicable to the Form CCC–605. The effective date of the cancellation shall be the date the request is received by the custodial office.

(3) If loans or loan deficiency payments are made available to producers through a CMA, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the CMA or its member cooperative, except as otherwise provided in this section. Cotton delivered to such a CMA shall not be eligible to receive a loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(f) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or

sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper.

(g) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

§ 1427.6 Disbursement of loans.

(a) Disbursement of loans to individual producers may be made by:

(1) County offices;

(2) Loan servicing agent; or

(3) An approved cotton clerk who has entered into a written agreement with CCC on Form CCC–810.

(b) Loan proceeds may be disbursed by CCC or a servicing bank agent bank to CMA's.

(c) The loan documents shall not be presented for disbursement unless the cotton covered by the mortgage or pledged as security is eligible in accordance with § 1427.5. If the cotton was not eligible cotton at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.7 Maturity of loans.

(a) (1) Form A loans and Form G loans mature on demand by CCC and no later than the last day of the 10th calendar month from the first day of the month in which the loan or loan advance is disbursed.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 30 days in advance of the accelerated maturity date.

(b) If the loan is not repaid by the loan maturity date, title to the cotton shall vest in CCC the day after such maturity date and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges.

§ 1427.8 Amount of loan.

(a) The loan rates for crops of upland cotton and ELS cotton will be determined and announced by CCC and made available at State and county offices.

(b) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(c) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (b) by the applicable loan rate.

(d) CCC will not increase the amount of the loan made with respect to any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made with respect to the weight of the bale or the classification for the bale, such error may be corrected.

§ 1427.9 Classification of cotton.

(a) References made to ''classification'' in this subpart shall include grade, staple length, and micronaire, and for upland cotton, leaf, extraneous matter, and strength readings. All cotton tendered for loan must be classed by an Agricultural Marketing Service (AMS) Cotton Classing Office (Cotton Classing Office) or other entity approved by CCC and tendered on the basis of such classification.

(b) An AMS cotton classification or other entity's classification acceptable by CCC showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples under the Smith-Doxey program.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse shall sample such cotton and forward the samples to the Cotton Classing Office or other entity approved by CCC serving the district in which the cotton is located. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the Cotton Classing Office or other entity approved by CCC.

(d) If a sample has been submitted for classification, another sample shall not be drawn, except for a review classification.

(e) Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value.

(f) If a review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

§ 1427.10 Approved storage.

(a) Eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC.

(1) Persons desiring approval of their facilities should communicate with the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within such warehouse.

(c) Warehouse charges paid by a producer will not be refunded by CCC.

(d) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1427.23.

§ 1427.11 Warehouse receipt and insurance.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt or are otherwise are acceptable to CCC. Any open yard endorsement on the warehouse receipt must have been rescinded. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Show that the cotton is covered by fire insurance; and

(4) Be dated on or prior to the date the producer signs the note and security agreement.

(b) Warehouse receipts, in accordance with § 1427.3, when issued as block warehouse receipts will be accepted when authorized by CCC only if the owner of the warehouse issuing the block warehouse receipt owns the cotton represented by the block warehouse receipt and the warehouse is

not licensed under the U.S. Warehouse Act.

(c)(1) Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if:

(i) The gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC; and

(ii) Gin weights are permitted by the licensing authority for the warehouse.

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,
(Name of warehouse),
By (Signature or initials),
Date.

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(d) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must indicate the receiving charges and include a charge for new set of ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouse are normally compressed in transit, the warehouse receipt must show the bale ties are not suitable for reuse when the bale is compressed and charges will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(f) In any case where loan collateral is forfeited, any unpaid storage or receiving charges will be paid to the warehouse by CCC after loan maturity or as soon as practicable after the cotton is ordered shipped by CCC.

(g) The warehouse receipt must show the compression status of the bale; i.e., flat, modified flat, standard, gin standard, standard density (short), gin universal, universal density (short), or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

§ 1427.12 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained before disbursement even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to a loan servicing agent, at a rate determined by CCC. Any such fee shall be in addition to any cotton clerk fee paid to a cotton clerk in accordance with paragraph (b) of this section. The amount of such fees is available in State and county offices and are shown on the note and security agreement and shall be deducted from the loan proceeds.

(b) Cotton clerks may only charge fees for the preparation of loan or loan deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available in State and county offices and is shown on the note and security agreement.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of upland cotton which has been redeemed in accordance with § 1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

(d) For each crop of upland cotton, the producer, as defined in the Cotton Research and Promotion Act (7 U.S.C. Chapter 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount; and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

(e) If the producers elects to forfeit the loan collateral to CCC, the producer shall pay to CCC, at the rates that are specified in the storage agreement between the warehouse and CCC, the following accrued warehouse charges:

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the period the cotton was pledged as collateral for the loan; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in § 1427.11.

§ 1427.14 [Reserved]

§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on eligible cotton to be placed under loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) If such person or firm is entitled to reimbursement from the proceeds of the loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments; and

(2) To loan or loan deficiency payment documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan, except for:

(i) Authorized cotton clerk fees;

(ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC; and

(iii) CCC loan service charges.

(c)(1) All loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the loans or loan deficiency

payments, except for CCC loan service charges and research and promotion fees, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan or loan deficiency payment advances or to such financial institution and such person or firm as joint payees; or

(ii) The person, firm, or financial institution which made the loan or loan deficiency payment advances to the producers.

(2) The documents shall be accompanied by Form CCC–825, Transmittal Schedule of Loan and Loan Deficiency Payment Documents, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the loan or loan deficiency payment advance. The Form CCC–825 shall show the amounts invested by the person, firm, or financial institution in the loans or loan deficiency payments.

(3) Upon receipt of the loan or loan deficiency payment documents and Form CCC–825, the county office will stamp one copy of the Form CCC–825 to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) County offices will review the loan or loan deficiency payment documents prior to disbursement and will return to the person, firm, or financial institution any documents determined not to be acceptable because of errors or illegibility. County offices will disburse the loans or loan deficiency payments for which loan or loan deficiency payment documents are acceptable by issuance of one check to the payee indicated on the applicable form and will mail the check to the address shown for such payee on the applicable form with a copy of Form CCC–825. The Form CCC–825 will show the date of disbursement by a county office and amount of interest earned by the person, firm, or financial institution.

(e) The person, firm, or financial institution shall be deemed to have invested funds in the loans or loan deficiency payment as of the date loan or loan deficiency payment documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) Interest will be computed on the total amount invested by the person, firm, or financial institution in the loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by a county office.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by county offices after the end of the month.

§ 1427.16 Reconcentration of cotton.

(a) CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC.

(b) CCC may reconcentrate the cotton pledged for the loan from one CCC-approved warehouse to another with the written consent of the producer and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area. However, if CCC determines such loan cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained.

(1) The county office, loan servicing agent, or CMA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office.

(2) Any fees, costs, or expenses incident to such actions shall be charges against the cotton.

(3) After the cotton is reconcentrated, the Kansas City Commodity Office shall obtain new warehouse receipts, allocate to individual bales, shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office, loan servicing agent, or CMA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

§ 1427.17 Custodial offices.

Forms CCC-Cotton A and CCC-Cotton A–1, collateral warehouse receipts and related documents will be maintained in the custody of CCC, the county office, the loan servicing agent, or the servicing agent bank, whichever disbursed the loan evidenced by such documents.

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan, or disposes of or moves the loan collateral without the prior written approval of CCC, such loan or loan deficiency payment shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts;

(v) Liquidated damages in accordance with paragraph (e); and

(vi) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1427.19.

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan or loan deficiency payment is less than the amount required in accordance with this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and the

regulations set forth in this subpart. Each such producer shall also remain liable for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application with respect to the producer's claimed share in such cotton after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of Form CCC-Cotton A, Form CCC-Cotton AA, or Form CCC–709, as applicable, liquidated damages shall be assessed on the quantity of the cotton which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(f) For first and second offenses, if CCC determines that a producer acted in good faith when the violation occurred, CCC shall:

(1) Require repayment of the loan principal and charges, plus interest applicable to the loan quantity affected by the violation or for loan deficiency payment, the loan deficiency payment amount applicable to the loan deficiency quantity involved with the violation, and charges plus interest from the date the loan deficiency payment was made; and

(2) Assess liquidated damages in accordance with paragraph (e);

(3) If the producer fails to pay such amounts within 30 calendar days from the date of notification, CCC shall call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(g) For cases other than first or second offenses, or any offense for which CCC cannot determine good faith when the violation occurred, CCC shall:

(1) Assess liquidated damages in accordance with paragraph (e); and

(2) Call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, and with respect to a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(h) If the county committee acting on behalf of CCC determines that the producer has committed a violation in accordance with paragraph (e), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee; and

(2) Administrative actions will be taken in accordance with paragraph (f) or (g).

(i) If the loan is called in accordance with this section, the producer must repay the loan at principal and charges, plus interest and may not repay the loan at the lower of the loan repayment rate in accordance with § 1427.19 or utilize the provisions of part 1401 of this chapter with respect to such loan.

(j) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (e) may be waived as determined by CCC.

§ 1427.19 Repayment of loans.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer or agent or subsequent agent authorized on Form CCC–605 may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) A producer or agent or subsequent agent authorized on Form CCC–605, may repay the loan amount for one or more bales of cotton pledged as collateral for a loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or servicing agent bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1400 of this chapter.

(f) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

(g) Notwithstanding any other provision of this section, CCC will not accept repayment of upland cotton at a rate based on the adjusted world price beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a non-workday, such loan repayments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

(h) If the upland cotton pledged as collateral is eligible to be repaid at a rate less than the loan level and charges, plus interest, and the adjusted world price determined in accordance with § 1427.25 is:

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605 the warehouse storage charges which have accrued, with respect to the cotton pledged as collateral for such loan, during the period the cotton was pledged for loan;

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges, that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605 that portion of the warehouse storage charges, that accrued during the period the cotton was pledged for loan, that are determined to be necessary to permit the loan to be repaid at the adjusted world price without regard to any warehouse charges that accrued before the cotton was pledged for loan; or

(3) Above the national average loan rate by as much as or more than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC shall not pay any of the accrued warehouse storage charges.

§ 1427.20 Handling payments and collections not exceeding $9.99.

To avoid the administrative costs of making small payments and handling small accounts, amounts of $9.99 or less will be paid to the producer only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1427.21 Settlement.

(a) The settlement of loans shall be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC.

(b) Settlements made by CCC with respect to eligible cotton which are acquired by CCC which are stored in an approved warehouse shall be made on the basis of the entries set forth on the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall take title to the cotton in accordance with § 1427.7(b).

§ 1427.22 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any proceeds in settlement of a loan or loan deficiency payment, payment shall, upon proper application to the county office or loan servicing agent which disbursed the loan or loan deficiency payment, be made to the person or persons who would be entitled to such producer's payment as provided in the regulations entitled Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, part 707 of this title.

§ 1427.23 Cotton loan deficiency payments.

(a) Producers may obtain loan deficiency payments for 1996 through 2002 crops of upland cotton in accordance with this section.

(b) In order to be eligible to receive such loan deficiency payments, the producer of the upland cotton must:

(1) Comply with all of the upland cotton loan eligibility requirements in accordance with this subpart;

(2) Agree to forgo obtaining such loans;

(3) File a request for payment for a quantity of eligible cotton in accordance with § 1427.5(a) on Form CCC–Cotton AA, Form CCC–709, or other form approved by CCC;

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) Provide classing information for such quantity in accordance with § 1427.9; and

(6) Otherwise comply with all program requirements.

(c) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a loan.

(d) The loan deficiency payment rate for a crop of upland cotton shall be the amount by which the loan rate determined for a bale of such crop exceeds the adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the request is received by the county office, loan servicing agent, or servicing agent bank.

(e) The total amount of any loan deficiency payments that a person may receive is subject to part 1400 of this chapter.

(f) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as specified in accordance with § 1427.5(c) on the date the cotton was ginned, the loan deficiency payment rate applicable to such cotton will be the loan deficiency payment rate based on the date the cotton was ginned. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with § 1427.5.

(g) Notwithstanding any other provision of this section, CCC will not accept applications for loan deficiency payments that specify the payment rate beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a non-workday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

§ 1427.24 [Reserved]

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton shall be determined by CCC as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward shipment price) are available for growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and

the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

(i) Weeks 1 and 2: (2 × Northern Europe current price) + Northern Europe forward price/3.

(ii) Weeks 3 and 4: Northern Europe current price + Northern Europe forward price/2.

(iii) Weeks 5 and 6: Northern Europe current price + (2 × Northern Europe forward price)/3.

(iv) Week 7 through July 31: Northern Europe forward price.

(3) The prevailing world market price for upland cotton as determined in accordance with paragraphs (a)(1) or (a)(2) of this section shall hereinafter be referred to as the ''Northern Europe price.''

(4) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by CCC.

(b) The prevailing world market price for upland cotton, adjusted in accordance with paragraph (c) of this section (adjusted world price), shall be applicable to the 1996 through 2002 crops of upland cotton.

(c) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with paragraph (a) of this section, adjusted as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1$^{3}/_{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1$^{1}/_{16}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton (U.S. base quality) by deducting the difference, as announced by CCC, between the applicable loan rate for a crop of upland cotton for M 1$^{3}/_{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

(3) The price determined in accordance with paragraph (c)(2) shall be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for a crop of upland cotton of the U.S. base quality, as announced by CCC.

(4)(i) The prevailing world market price, as adjusted in accordance with paragraphs (c)(1) through (c)(3), may be further adjusted if it is determined that:

(A) Such price is less than 115 percent of the current crop-year loan level for U.S. base quality cotton, and

(B) The Friday through Thursday average price quotation for the lowest-priced United States growth as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe price) is greater than the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe.

(ii) During the period when both current shipment prices and forward shipment prices are available for growths quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe, the U.S. Northern Europe price provided in paragraph (c)(4)(i)(B) shall be determined as follows: Beginning with the week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the average of the U.S. Northern Europe current price and the average of the U.S. Northern Europe forward price are available, the result calculated by the following procedure:

(A) Weeks 1 and 2: (2×U.S. Northern Europe current price)+(U.S. Northern Europe forward price) /3.

(B) Weeks 3 and 4: (U.S. Northern Europe current price)+(U.S. Northern Europe forward price) /2.

(C) Weeks 5 and 6: (U.S. Northern Europe current price)+(2×U.S. Northern Europe forward price) /3.

(D) Week 7 through July 31: U.S. Northern Europe forward price.

(iii) In determining the U.S. Northern Europe price as provided in paragraphs (c)(4)(i)(B) and (c)(4)(ii):

(A) If quotes for either the U.S. Memphis territory or the California/Arizona territory are not available for any week, the available quotations will be used.

(B) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used.

(C) If no quotes are available for either the U.S. Memphis territory or the California/Arizona territory during the Friday through Thursday period, no adjustment will be made.

(iv)(A) The adjustment shall be based on some or all of the following data, as available:

(*1*) The U.S. share of world exports;

(*2*) The current level of cotton export sales and shipments; and

(*3*) Other data determined by CCC to be relevant in establishing an accurate prevailing world market price, adjusted to United States quality and location.

(B) The adjustment may not exceed the difference between the U.S. Northern Europe price, as determined in paragraphs (c)(4)(i) through (c)(4)(iii), and the Northern Europe price, as determined in paragraph (a).

(d) In determining the average difference in the 52-week period as provided in paragraph (c)(1):

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe and the average price of M 1$^{3}/_{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual

cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If a Thursday price quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe is not available for any week, CCC:

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for that week, or

(ii) May not take that week into consideration.

(3) If Thursday price quotations for any week are not available for either,

(i) both the Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe, or

(ii) the average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted in the designated U.S. spot markets, that week will not be taken into consideration.

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c), and the amount of the additional adjustment as determined in accordance with paragraph (f), shall be announced, to the extent practicable, at 5 p.m. eastern time each Thursday continuing through the last Thursday of July 2003. In the event that Thursday is a non-workday, the determination will be announced, to the extent practicable, at 8 a.m. eastern time the next workday. The adjusted world price and the amount of the additional adjustment will be effective upon announcement and will remain in effect for a period as announced by CCC.

(f)(1)(i) The adjusted world price, as determined in accordance with paragraph (c), shall be subject to further adjustments as provided in this section with respect to all qualities of upland cotton eligible for loan except the following grades of upland cotton with a staple length of 1 1/16 inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade and Staple length must be determined in accordance with § 1427.9. If no such official classification is presented, the coarse count adjustment shall not be made.

(2) The adjustment for upland cotton provided for by paragraph (f)(1) shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

(A) During the period when only one daily price quotation for each growth quoted for ''coarse count'' cotton C.I.F. northern Europe is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton C.I.F. northern Europe; or

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for ''coarse count'' cotton C.I.F. northern Europe, the result calculated by the following procedure: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton C.I.F. northern Europe (Northern Europe coarse count current price) and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton C.I.F. northern Europe (Northern Europe coarse count forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(*1*) Weeks 1 and 2: (2 ''×'' Northern Europe coarse count current price) + Northern Europe coarse count forward price/3;

(*2*) Weeks 3 and 4: Northern Europe coarse count current price + Northern Europe coarse count forward price/2;

(*3*) Weeks 5 and 6: Northern Europe coarse count current price + (2 × Northern Europe coarse count forward price)/3; and

(*4*) Week 7 through July 31: The Northern Europe coarse count forward price, minus:

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton for SLM 1 1/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton.

(iii) The result of the calculation as determined in accordance with this paragraph (f)(2) shall hereinafter be referred to as the ''Northern Europe coarse count price.''

(3) With respect to the determination of the Northern Europe coarse count price in accordance with paragraph (f)(2)(i):

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be taken into consideration; and

(iii) If quotes for three growths are not available for at least three days in the 5-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with paragraph (f)(2) for the latest available week will continue to be applicable.

(g) If the 6-week transition periods from using current shipment prices to using forward shipment prices in the determination of the Northern Europe price in accordance with paragraph (a)(2), and the Northern Europe coarse count price in accordance with paragraph (f)(2)(i)(B) do not begin at the same time, CCC shall use either current shipment prices, forward shipment prices, or any combination thereof, to determine the Northern Europe price and/or the Northern Europe coarse count price used in the determination of the adjustment for upland cotton provided for by paragraph (f)(1) and determined in accordance with paragraph (f)(2), in order to prevent distortions in such adjustment.

(h) The adjusted world price, determined in accordance with paragraph (c), shall be subject to further adjustments, as determined by CCC based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the loan program for a crop of upland cotton.

§ 1427.26 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 and OMB Control number 0560–0040, 0560, 0074, 0560–0027, and 0560–0054 was assigned.

26. Sec. 1427.100 is amended by revising the first sentence of paragraph (a), paragraph (b)(1) introductory text, and by adding a new paragraph (b)(3) to read as follows:

§ 1427.100 Applicability.

(a) The regulations in this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 2003. These regulations set forth the terms and conditions under which the CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of upland cotton who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC to participate in the upland cotton user marketing certificate program in accordance with Section 136(a) of the Federal Agriculture Improvement and Reform Act of 1996.

(b)(1) During the period beginning August 1, 1991, and ending July 31, 2003, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in any week following a consecutive 4-week period in which—

* * * * *

(3) Notwithstanding the provisions of this subpart, user marketing certificate program payments shall not exceed $701,000,000 during fiscal years 1996 through 2002. Any outstanding obligations incurred by CCC to exporters under this program before April 5, 1996, will not be subject to the $701,000,000 limitation. Obligations incurred by CCC on or after April 5, 1996, will be charged against the $701,000,000.

27. Section 1427.101 is amended by revising paragraph (a) to read as follows:

§ 1427.101 Administration.

(a) The upland cotton user marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out in the field by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

* * * * *

28. Section 1427.103 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1427.103 Eligible upland cotton.

(a) * * *

(1) Opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2003, or, excluding cotton covered under paragraph (a)(2), exported by an eligible exporter on or after July 18, 1996 and on or before July 31, 2003, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect, and which meets the requirements of paragraphs (b) and (c); or

(2) Sold for export by an eligible exporter under a written contract entered into on or after August 1, 1991, and prior to July 18, 1996 during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect and which is contracted for delivery by the eligible exporter by not later than September 30, 1996, and which meets the requirements of paragraphs (b) and (c).

29. Sec. 1427.107 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(2) introductory text, (d) introductory text, (e) introductory text, and by adding (f)(1)(iii) to read as follows:

§ 1427.107 Payment Rate.

(a) * * *

(1) For exporters for cotton shipped on or after July 18, 1996 (excluding cotton covered under paragraph (a)(2)) and for domestic users for bales opened during the period—

(i) * * *

(ii) Beginning the Friday through Thursday week after the week in which the NEc price and the NEf price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent.

(iii) * * *

(2) For exporters prior to July 18, 1996 for cotton which is contracted for delivery by not later than September 30, 1996,—

* * * * *

(d) Notwithstanding any other provision of this section, for contracts made by exporters prior to July 18, 1996, that specify shipment of the cotton by not later than September 30, 1996,—

* * * * *

(e) For U.S. cotton sold by the exporter under an optional origin contract for delivery by not later than September 30, 1996, prior to July 18, 1996, the payment rate * * *

(f) * * *

(1) * * *

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc price and the NEc price, the marketing year transition shall be implemented immediately as provided for in paragraph (c)(1).

* * * * *

30. Section 1427.108 is amended by revising paragraphs (c)(2), and (d) and by adding paragraph (c)(3) to read as follows:

§ 1427.108 Payment.

* * * * *

(c) * * *

(2) From August 1, 1991, through July 17, 1996, sold by the exporter on the date the contract for sale is confirmed in writing and which is contracted for delivery by not later than September 30, 1996; and

(3) Excluding cotton covered under paragraph (c)(2), through July 31, 2003, exported by the exporter on the date that CCC determines is the date on which the cotton is shipped.

(d) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchases and consumption of eligible cotton by the domestic user or proof of export of eligible cotton by the exporter, as required by the provisions of the Upland Cotton Domestic User/Exporter Agreement issued by CCC.

31. Sec. 1427.109 is amended by revising paragraph (a)(3) to read as follows:

§ 1427.109 Contract cancellations.

(a) * * *

(3) All new export contracts entered into by the exporter on or after August 30, 1991, and prior to July 18, 1996 which are for delivery by not later than September 30, 1996.

* * * * *

32. Subpart D is revised to read as follows:

Subpart D—Regulations for the Recourse Seed Cotton Loan Program

Sec.

Subpart D—Regulations for the Recourse Seed Cotton Loan Program

§ 1427.160 Applicability.

(a) The regulations in this subpart are applicable to the 1996 through 2002 crops of upland and extra long staple seed cotton. These regulations set forth the terms and conditions under which recourse seed cotton loans shall be made available by the Commodity Credit Corporation (''CCC''). Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Loan rates and the forms which are used in administering the recourse seed cotton loan program for a crop of cotton are available in State and county Farm Service Agency (FSA) offices (State and county offices, respectively). Loan rates shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request the loan at the county office which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced. A CMA must, unless otherwise authorized by CCC, request the loan at a central county office designated by the State committee. All note and security agreements and related documents necessary for the administration of the recourse seed cotton loan program shall be prescribed by CCC and shall be available at State and county offices.

(d) Loans shall not be available for seed cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.161 Administration.

(a) The recourse seed cotton loan program which is applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the recourse seed cotton program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the recourse seed cotton loan program.

(f) A representative of CCC may execute loan applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.162 Definitions.

Section 1427.3 of this part shall be applicable to this subpart.

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent shall request a loan at the county office for the county which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced and which will assist the producer in completing the loan documents, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain loans through a central county office designated by the State committee.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.164 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, CMA estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12 and 718 of this title, and part 1412 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan documents are signed by the guardian;

(3) Any note and security agreement signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) Two or more producers may obtain a single joint loan with respect to cotton which is stored in an approved storage if the cotton is jointly owned by such producers. The cotton may have been produced by two or more eligible producers on one or more farms.

(e) A CMA may obtain loans on the eligible production of such cotton with respect to such cotton on behalf of the members of the CMA who are eligible to receive loans for a crop of cotton. For purposes of this subpart, the term ''producer'' includes a CMA.

§ 1427.165 Eligible seed cotton.

(a) Seed cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must:

(1) Be in existence and in good condition at the time of disbursement of loan proceeds;

(2) Be stored in identity-preserved lots in approved storage meeting requirements of § 1427.171;

(3) Be insured at the full loan value against loss or damage by fire;

(4) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the seed cotton to CCC as collateral for a loan;

(5) Not have been previously sold and repurchased; or pledged as collateral for a CCC loan and redeemed;

(6) Be production from acreage that has been reported timely in accordance with part 718 of this title; and

(7) For upland cotton, be production from a farm with a production flexibility contract in accordance with part 1412 of this chapter.

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS), Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable documentation issued for the control sample.

(c) To be eligible for loan, the beneficial interest in the seed cotton must be in the producer who is pledging the seed cotton as collateral for a loan as provided in § 1427.5(c).

§ 1427.166 Insurance.

The seed cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the seed cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.168 [Reserved]

§ 1427.169 Fees, charges, and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined in accordance with paragraph (b).

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine-picked cotton and 22 percent for machine-stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

(1) Condition or suitability of the storage site or structure;

(2) Condition of the cotton;

(3) Location of the storage site or structure; and

(4) Other factors peculiar to individual farms or producers which related to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, from an approved gin. If the cotton is not stored on the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement.

(a) A producer may, at any time prior to maturity of the loan, obtain release of all or any part of the loan seed cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from CCC for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the seed cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan principal plus interest and charges

thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;

(ii) 5 days after the date of the producer received the AMS classification in accordance with § 1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan principal, interest, and charges must be satisfied immediately.

(3) A producer, except a CMA, may obtain a nonrecourse loan or loan deficiency payment in accordance with subpart A of this part, on the lint cotton, but:

(i) The loan principal, interest, and charges on the seed cotton must be satisfied from the proceeds of the nonrecourse loan in accordance with subpart A of this part; or

(ii) The loan deficiency payment must be applied to the loan principal, interest, and charges on the outstanding seed cotton loan.

(4) A CMA must repay the seed cotton loan principal, interest, and charges before pledging the cotton for a nonrecourse loan or before a loan deficiency payment can be approved in accordance with subpart A of this part, on the lint cotton. If CMA's authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the CMA:

(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan principal, plus interest and charges, within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the seed cotton or to release the producer or CMA from liability for the loan principal, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan principal, plus interest and charges on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a nonrecourse loan in accordance with subpart A of this part on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the seed cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the seed cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the seed cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a nonrecourse loan in accordance with subpart A of this part by the seed cotton loan maturity date may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds received from the sales of the cotton are less than the amount due on the loan (including principal, interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference. If the proceeds received from sale of the cotton are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the cotton, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1427.174 Maturity of seed cotton loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calendar year in which such crop is normally harvested.

§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan, maintaining a loan, or settling a loan or if the producer disposes of or moves the loan collateral without the prior approval of CCC, such loan amount shall be refunded upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC with respect to the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts; and

(v) Liquidated damages in accordance with paragraph (e).

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, seed cotton pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this subpart. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the seed cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such seed cotton, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or in maintaining or settling a loan or disposing of or moving the collateral without the prior approval of CCC. Accordingly, if CCC or the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages shall be assessed on the quantity of the seed cotton which is

involved in the violation. If CCC or the county committee determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense;

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(f) For first and second offenses, if CCC or the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid;

(2) Assess liquidated damages in accordance with paragraph (e); and

(3) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan involved in the violation.

(g) For cases other than first or second offenses, or any offense for which CCC or the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages in accordance with paragraph (e);

(2) Call the applicable loan involved in the violation.

(h) If CCC or the county committee determines that the producer has committed a violation in accordance with paragraph (e), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information to the county committee regarding the circumstances which caused the violation, and

(2) Administrative actions will be taken in accordance with paragraphs (f) or (g).

(i) Any or all of the liquidated damages assessed in accordance with the provision of paragraph (e) may be waived as determined by CCC.

PART 1430—DAIRY PRODUCTS

33. The authority citation for 7 CFR part 1430 is revised to read as follows:

Authority: 7 U.S.C. 7251 and 7252; and 15 U.S.C. 714b and 714c.

§§ 1430.450–1430.470 [Removed]

34. The subpart titled ''Dairy Termination Program'' (§§ 1430.450–1430.470) is removed.

35. The subpart heading which reads ''Price Support Program'', preceding § 1430 is designated as Subpart A and the heading is revised to read ''Subpart A—Price Support Program for Milk''.

36. Subpart A is revised to read as follows:

Subpart A—Price Support Program for Milk

Sec.

Subpart A—Price Support Program for Milk

§ 1430.1 Definitions.

For purposes of this subpart, unless the context indicates otherwise, the following definitions shall apply:

AMS means the Agricultural Marketing Service, USDA.

CCC means the Commodity Credit Corporation, USDA.

FSA means the Farm Service Agency, USDA.

Manufacturing allowance means:

(1) For milk used to produce butter and nonfat dry milk, the amount by which the product price value of butter and nonfat dry milk manufactured from 100 pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of nonfat milk solids resulting from a State's yields and product price formulas exceeds the State's class price for the milk used to produce those products; or

(2) For milk used to produce cheese, the amount by which the product price value of cheese manufactured from 100 pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of nonfat milk solids resulting from a State's yields and product price formulas exceeds the State's class price for the milk used to produce cheese.

Plant means the physical assets of an individual, partnership, association, corporation, cooperative, or other business enterprise used in the production of dairy products.

USDA means the United States Department of Agriculture.

§ 1430.2 Price support levels and purchase conditions.

(a)(1) The levels of price support provided to farmers marketing milk containing 3.67 percent milkfat from dairy cows are: $10.35 per hundredweight for calendar year 1996, $10.20 per hundredweight for calendar year 1997, $10.05 per hundredweight for calendar year 1998, and $9.90 per hundredweight for calendar year 1999.

(2) Subject to paragraph (b), price support for milk will be made available through CCC purchases of butter, nonfat dry milk, and Cheddar cheese, offered subject to the terms and conditions of FSA's purchase announcements.

(3) CCC purchase prices for dairy products will be announced by USDA news release.

(4) CCC may, by special announcement, offer to purchase other dairy products to support the price of milk.

(5) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from the United States Department of Agriculture, Farm Service Agency, Procurement and Donations Division, Stop 0552, 1400 Independence Ave. SW., Washington, DC 20250–0552, or the United States Department of Agriculture, Farm Service Agency, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205.

(b)(1) The block cheese purchased shall be U.S. Grade A or higher, except that the moisture content shall not exceed 38.5 percent; the barrel cheese shall be U.S. Extra Grade, except that the moisture content shall not exceed 36.5 percent.

(2) The nonfat dry milk purchased shall be U.S. Extra Grade, except that the moisture content shall not exceed 3.5 percent.

(3) The butter purchased shall be U.S. Grade A or higher.

(c) The products purchased shall be manufactured in the United States from milk produced in the United States and shall not have been previously owned by CCC.

(d) Purchases will be made in carlot weights specified in the announcements. Grade and weights shall be evidenced by USDA issued inspection certificates.

§ 1430.3 Ineligibility for purchase of products produced in States with excessive manufacturing allowances.

(a) For the period beginning May 1, 1996, and ending December 31, 1999, no product produced in a plant in a State under State milk pricing regulation will be eligible for sale to the CCC under § 1430.2 of this subpart, if the State, as determined by the Director, Dairy Division, AMS, provides in formulas establishing prices that handlers must

pay for milk, a manufacturing allowance that exceeds either:

(1) $1.65 per hundredweight of milk for milk manufactured into butter and nonfat dry milk; and

(2) $1.80 per hundredweight of milk for milk manufactured into cheese.

(b) Prior to a final determination that a State has in effect a manufacturing allowance that exceeds the manufacturing allowances provided in (a) of this section, the State shall be provided the opportunity to present information at a hearing before the Director, Dairy Division, AMS. The Director shall establish the procedures for such hearing.

(c) Reconsideration and review of the determinations made under (b) of this section may be sought by petition to the Deputy Administrator, Marketing Programs, AMS under procedures established by the Deputy Administrator.

Subpart B—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991, to December 31, 1997

37. The subpart heading which reads ''Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991, to December 31, 1997'', preceding § 1430.340 is designated as Subpart B.

38. Subpart B is amended by adding § 1430.362 to read as follows:

§ 1430.362 Assessment Termination, Refund Provisions for 1996 Assessments, and Clarification of Certain Procedures and Delegations.

(a) Notwithstanding any other provision of this part, no assessment shall be collected for milk marketed after April 30, 1996. Amounts collected for 1996 marketings shall be refundable as otherwise provided for in this subpart so long as, determined pursuant to this subpart, the producer's total milk marketings for calendar year 1996 were equal to or less than the producer's total marketings for calendar year 1995.

(b) For purposes of applying the provisions of this subpart:

(1)(i) No adjustment shall be made for milk marketings in a leap year, but rather comparisons between the refund and base period milk marketings shall be made on a calendar year basis.

(ii) If a producer quits marketing milk from a dairy operation during the refund period, the comparison of marketings with the preceding year shall be made by comparing the marketings of the months and days of production in the refund period with the corresponding months and days of the base period, subject, in addition, to the provisions in paragraph (a).

(2)(i) A producer under this subpart may be deemed to include the combination of all persons or entities with an interest in the production of milk on a farm or dairy operation.

(ii) The addition or removal of an individual or entity, who adds to or removes from existing dairy units any dairy cows, to or from those with an interest in a dairy operation, shall constitute the formation of a new producer and shall be deemed to end the production history on that farm or dairy operation of the previous producer.

(3) All delegations to persons or agencies contained in this subpart shall be deemed, as appropriate, to be made to the successor official or agency resulting from any reorganization made pursuant to Public Law 103–354.

39. Part 1430 is amended by adding Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products to read as follows:

Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products

Sec.

Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products

§ 1430.400 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart. The terms defined in parts 1405 and 1421 of this chapter shall also be applicable.

CCC means the Commodity Credit Corporation, USDA.

FSA means the Farm Service Agency, USDA.

Processor means a person or legal entity that commercially processes milk into Cheddar cheese, butter, or nonfat dry milk.

Recourse loan means a loan that requires repayment in full on or before the maturity date and forfeiture does not necessarily satisfy the loan indebtedness.

USDA means the United States Department of Agriculture.

§ 1430.401 Applicability.

(a) The regulations in this subpart are applicable to eligible dairy products produced after December 31, 1999. These regulations set forth the terms and conditions under which CCC will make recourse loans to eligible processors. Additional terms and conditions shall be those set forth in the loan application and the note and security agreement which a processor must execute in order to receive such a loan.

(b) Loan rates for the eligible dairy products shall be made available in FSA State and county offices.

(c) Recourse loans shall be available as provided in this part for eligible Cheddar cheese, butter, and nonfat dry milk.

§ 1430.402 Administration.

(a) The loan program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), and shall be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of this subpart.

(c) The State committee shall take any action these regulations require which the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), from determining any question arising under the program or from revising or modifying any State or county committee determination.

(e) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect recourse loan program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document which is not executed in accordance with such terms and conditions, including any purported

execution prior to the CCC authorized date, is null and void.

§ 1430.403 Loan rates.

(a) The Secretary will announce before January 1, 2000, and thereafter, before October 1 of each year, that a recourse loan program is available under this subpart, and loan rates for Cheddar cheese, butter, and nonfat dry milk based on a milk equivalent value of $9.90 per hundredweight of milk containing 3.67 percent butterfat.

(b) Such loan rates will be announced by USDA news release.

§ 1430.404 Quantity eligible for loan.

(a) Any processor is eligible for a recourse loan on eligible dairy products owned by such processor.

(b) The total quantity of eligible dairy product which a processor may pledge as collateral for a loan at any single time may not exceed:

(1) the quantity of eligible dairy products processed during the fiscal year in which application is being made; plus

(2) the quantity of eligible dairy products processed during and under loan on September 30 of the prior fiscal year, if such products are immediately repledged as collateral for a supplemental loan on October 1 of the current fiscal year.

(c) All eligible dairy products pledged as collateral for a loan are required to be stored identity-preserved in eligible storage facilities.

(d) The processor shall furnish CCC such certification as CCC considers necessary to verify compliance with quantitative limitations.

§ 1430.405 Quality eligibility requirements.

(a) For dairy products to be eligible to be pledged as collateral for a recourse loan, the processor must furnish CCC such certification as CCC considers necessary to verify the following minimum quality requirements:

(1) Cheddar cheese shall be:

(i) U.S. Grade A or higher and moisture shall not exceed 38.5 percent for block cheese; or

(ii) U.S. Extra Grade and moisture shall not exceed 36.5 percent for barrel cheese.

(2) Nonfat dry milk shall be U.S. Extra Grade and moisture shall not exceed 3.5 percent; and

(3) Butter shall be U.S. Grade A or higher.

(b) Any eligible dairy product pledged as collateral must be free of any contamination by either natural or manmade substances and must not contain chemicals or other substances which are poisonous or harmful to humans or animals.

(c) CCC shall, at any time, have the right to inspect collateral in the storage facilities in which it is stored.

§ 1430.406 Storage facility requirements.

Eligible dairy products will be stored under the terms and conditions CCC prescribes.

§ 1430.407 Availability, disbursement, and maturity of loans.

(a)(1) To obtain an initial recourse loan on eligible dairy products, a dairy processor:

(i) Must file a request for an initial recourse loan, as CCC prescribes, with the State committee of the State where such processor is headquartered or a State committee designated county committee;

(ii) Must execute a note and security agreement and a storage agreement as CCC prescribes; and

(iii) Shall be responsible for all costs incurred in moving eligible dairy products to an eligible storage facility.

(2) A request for an initial loan must be filed no later than September 30 of the fiscal year in which the product was produced, but no earlier than January 1, 2000.

(3) If there are any liens or encumbrances on eligible dairy products pledged as collateral for a recourse loan, waivers that fully protect CCC's interest must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the eligible dairy product after the loan is approved.

(4) A processor shall pay CCC a loan service fee in connection with the disbursement of each loan. The amount of the service fee shall be determined and announced by the Executive Vice President, CCC.

(b) No loan proceeds may be disbursed for dairy products until they have actually been produced and are established as being eligible to be pledged as loan collateral.

(c) Loans will mature no later than September 30 following disbursement of the loan.

(1) Loan maturity dates may be accelerated by CCC in accordance with § 1430.428 (d) of this subpart.

(2) CCC may offer supplemental loans at the maturity of initial loans.

(d)(1) A processor may, if supplemental loans are offered, before the maturity date of an initial loan, request a supplemental loan by:

(i) Repaying the initial loan principal plus interest on September 30;

(ii) Repledging as collateral for a supplemental loan, on October 1, eligible dairy products identified as collateral for an initial loan maturing on September 30 of the immediately preceding fiscal year; and

(iii) Executing a note and security agreement and a storage agreement as CCC prescribes.

(2) Such supplemental loan:

(i) Shall be requested by the processor no later than September 30 of the fiscal year in which the initial loan is maturing.

(ii) Shall be at the loan rate and interest rate applicable to the month in which the supplemental loan is disbursed.

(iii) Shall mature as CCC specifies, but not later than September 30 following disbursement of the supplemental loan.

(iv) May only be authorized for 1 fiscal year.

(e) The county office shall file or record, as required by State law, all security agreements which are issued with respect to eligible dairy products pledged as collateral for loan. The cost of filing and recording shall be paid for by CCC.

§ 1430.408 Loan maintenance and liquidation.

(a) The processor shall:

(1) Abide by the terms and conditions of the loan application and the note and security agreement;

(2) Pay interest on the principal at a rate determined under part 1403 of this chapter;

(3) be responsible for storage costs through loan maturity;

(4) Be responsible for any loss in quantity or quality of the loan collateral, and

(5) be responsible for maintaining the quality and quantity of the loan collateral.

(b) The processor must pay CCC the principal and interest due and redeem their collateral no later than the loan maturity date.

(c) A processor may, at any time before maturity of the loan, redeem all or any part of the loan collateral by paying CCC the loan principal and interest applicable to the quantity of dairy product redeemed.

(d) CCC may at any time accelerate the date of repayment of the loan indebtedness, including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(e) Prior to loan maturity:

(1) The processor may request and obtain prior written approval of the loan making office to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before repayment of the loan by executing a Marketing Authorization for Loan Collateral (Form CCC–681–1).

(2) The loan making office will approve such a request when the buyer of eligible dairy products agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding the dairy products the buyer purchased. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the dairy product, or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(f) If a processor's loan indebtedness is not satisfied in accordance with the provisions of this section:

(1) Late payment charges in addition to interest on the processor's indebtedness shall accrue at the rate specified in part 1403 of this chapter and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale; and

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges incurred by the CCC.

(g) If CCC determines that the actual eligible quantity serving as collateral for a recourse loan is less than the loan quantity because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call all loans of the processor. Such determination shall result in the processor being deemed ineligible for loans for at least the remainder of the fiscal year.

(h) The security interests obtained by the CCC as a result of the execution of a security agreement by an eligible processor shall be superior to all statutory and common law liens on the collateral.

§ 1430.409 Miscellaneous provisions.

(a) CCC will not require the processor to insure the eligible dairy product pledged as collateral. However, if the processor insures such eligible dairy product and an indemnity is paid thereon, such indemnity shall accrue to the benefit of CCC to the extent of CCC's interest in the eligible dairy product involved in the loss.

(b) The regulations the Secretary issues governing offsets and withholding set forth at part 3 of this title and part 1403 of this chapter are applicable to the program set forth in this subpart.

(c) A processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations of part 780 of this title.

(d) CCC, as well as any other U.S. Government agency, shall have the right of access to the premises of the processor in order to inspect, examine, and make copies of the books, records, accounts, and other written data as the examining agency deems necessary to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than 3 years from the loan disbursement date.

(e) Any false certification made for the purpose of enabling a processor to obtain or retain a recourse loan to which it is not entitled will subject the person making such certification to liability under applicable federal civil and criminal statutes.

§ 1430.410 Applicable forms.

The CCC forms used in connection with the dairy recourse loan program will be available from the appropriate State committee or designated county committee. For any CCC form that refers to program participation by producers, the term ''producer'' shall be deemed to mean ''processor'' and the term ''crop year'' shall be deemed to mean ''fiscal year''.

40. Part 1434 is revised to read as follows:

PART 1434—HONEY

Authority: 7 U.S.C. 1421, 1423, 1425a, 1446h, 4601 et seq.; 15 U.S.C. 714b and 714c.

§ 1434.1 Termination.

The price support and loan deficiency program for honey was terminated at the conclusion of the 1995 marketing year. The regulations setting forth the applicable terms and conditions for the Honey Program for the 1995 and prior marketing years found at part 1434 of this title as of January 1, 1996, shall be applicable to determinations made with respect to the administration of loans outstanding on or after July 18, 1996.

41.–42. Part 1435 is revised to read as follows:

PART 1435—SUGAR PROGRAM

Subpart A—General Provisions

Subpart B—Loan Program

Subpart C—Sugar Marketing Assessments

Subpart D—Information Reporting and Recordkeeping Requirements

Authority: 7 U.S.C. 7272; and 15 U.S.C. 714b and 714c

Subpart A—General Provisions

§ 1435.1 Applicability.

(a) The regulations of this part in effect on January 1, 1995, shall govern the price support loan program and producer protections for the 1995 crop year. These regulations have been removed from the CFR but may be found in the previous CFR volume containing revisions as of January 1, 1995.

(b) These regulations set forth the terms and conditions under which Commodity Credit Corporation (CCC) will make loans and enter agreements with eligible processors for the 1996–2002 crop years. Additional terms and conditions are set forth in the loan application and the note and security agreement which the processor must execute in order to receive a loan. These regulations stipulate the requirements for making sugar marketing assessment payments to CCC for fiscal years 1996 through 2003 and the information reporting requirements for the 1996–2002 crop years.

§ 1435.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration. The terms defined in part 718 of this title are also applicable.

Beet sugar means sugar which is processed directly or indirectly from sugar beets or sugar beet molasses.

Cane sugar refiner means a person who processes raw cane sugar into refined crystalline sugar or liquid sugar.

CCC means the Commodity Credit Corporation, USDA.

Crop year means the period from July 1 through June 30, inclusive. In referring to the crop year for a particular crop, the crop year begins on July 1 of the year of that crop. For example, the crop year for the 1996 crop begins on July 1, 1996, and is referred to as the ''1996 crop

year.'' The 1996 crop means sugar processed from domestically-produced sugar beets or sugarcane during the 1996 crop year. Sugar from desugaring molasses is considered to be from the crop year during which the desugaring took place.

First processor means a person who commercially produces beet sugar or raw cane sugar, directly or indirectly, from domestically-produced sugar beets or sugarcane, or from molasses or thick juice derived from domestically-produced sugar beets or sugarcane.

Market means, relative to any first processor, the shipment in conjunction with a sale or other disposition, or the forfeiture to CCC, of beet sugar or raw cane sugar by the first processor of such sugar, and the movement of raw cane sugar into the refining process. Beet sugar or raw cane sugar is deemed to be marketed as of the date of shipment from the first processor's facility, the date on which raw cane sugar was moved into the refining process, or the date on which sugar was forfeited to CCC.

Nonrecourse loan means a loan for which the eligible sugar offered as loan collateral may be delivered or forfeited to CCC, at loan maturity, in satisfaction of the loan indebtedness.

Raw sugar means any sugar which is to be further refined or improved in quality.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = {[(actual degree of polarization $-$ 92) $\times$ 0.0175] + 0.93} $\times$ actual weight. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the ''total sugar content'' (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

Recourse loan means a loan that requires repayment in full on or before the maturity date and forfeiture of the sugar does not necessarily satisfy the loan indebtedness.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane or sugar beets and consisting of, or containing, sucrose or invert sugar, including all raw sugar, refined crystalline sugar, liquid sugar, edible molasses, and cane syrup.

Sugar beet processor means a person who produces sugar by commercially processing sugar beets or sugar beet molasses.

Sugarcane processor means a person who produces raw cane sugar by commercially processing sugarcane or sugarcane molasses.

Tariff-rate quota means the total of the aggregate quantities of raw cane sugar and other sugars, syrups and molasses established, or subsequently modified, by the Secretary pursuant to the provisions of additional U.S. note 5(a) to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) for imports to be entered, or withdrawn from warehouse for consumption, under subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS or successor subheadings.

§ 1435.3 Maintenance and inspection of records.

(a) CCC, as well as any other U.S. Government agency, has the right of access to the premises of any sugar beet processor, sugarcane processor, cane sugar refiner, or of any other person having custody of records that the examining agency deems necessary to verify compliance with the requirements of this part. The examining agency has the right to inspect, examine, and make copies of such books, records, accounts, and other written or electronic data as the examining agency deems relevant.

(b) Each sugar beet processor, sugarcane processor, and cane sugar refiner or any person having custody of the records shall retain such books, records, accounts, and other written or electronic data for not less than 3 years from the date:

(1) A loan is disbursed in accordance with subpart B;

(2) A marketing assessment is remitted to CCC in accordance with subpart C; and

(3) Market data are reported to CCC in accordance with subpart D.

Subpart B—Loan Program

§ 1435.100 Applicability.

(a) This subpart is applicable to the 1996 through 2002 crops of sugar beets and sugarcane. These regulations set forth the terms and conditions under which CCC will make recourse and nonrecourse loans available to eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement which a processor must execute to receive a loan.

(b) Loan rates used in administering the loan program are available in FSA State and county offices.

(c) Loans shall not be available for sugar produced from imported sugar beets, sugarcane, or molasses.

§ 1435.101 Administration.

(a) The loan program shall be administered under the general supervision of the Executive Vice President, CCC, (Administrator, FSA) and shall be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, may not modify or waive any of the provisions of the regulations of part 1435.

(c) The State committee shall take any action part 1435 requires which the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action which is not in accordance with part 1435; or

(2) Require a county committee to withhold taking any action which is not in accordance with part 1435.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, (Administrator, FSA) from determining any question arising under the program or from reversing or modifying any State or county committee determination.

(e) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such requirements do not adversely affect program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the CCC-authorized date, shall be null and void.

§ 1435.102 Loan types.

(a) CCC will make available to eligible processors of the 1996 through 2002 crops of domestically-produced sugar beets and sugarcane:

(1) Recourse loans if the tariff-rate quota is not above 1,500,000 short tons, raw value, at the time of loan approval

and has never been above 1,500,000 short tons, raw value, at any time during the fiscal year;

(2) Nonrecourse loans if the tariff rate quota exceeds 1,500,000 short tons, raw value, at the time of loan approval or has exceeded 1,500,000 short tons, raw value, at any time during the fiscal year.

(b) Outstanding recourse loans will be automatically converted to nonrecourse loans if the tariff-rate quota is increased to a level above 1,500,000 short tons, raw value. However, if the recourse loan recipient pays the principal amount of the loan, plus interest, within 30 days from the date the tariff-rate quota was increased, then the loan will be treated for all purposes whatsoever as if it had not been converted to a nonrecourse loan. Once nonrecourse loans are made available, they will not be converted to recourse loans any time during the fiscal year, even if the tariff-rate quota is subsequently reduced to a level equal to, or less than, 1,500,000 short tons, raw value.

§ 1435.103 Loan rates.

(a) The national average loan rate for raw cane sugar produced from the 1996 through 2002 crops of domestically-grown sugarcane is 18 cents per pound, raw value.

(b) The national average loan rate for refined beet sugar from 1996–2002-crop domestically-grown sugar beets is 22.90 cents per pound of refined beet sugar.

(c) The loan rates for eligible sugar are adjusted to reflect the processing location of the sugar offered as loan collateral and are available from State and county offices.

§ 1435.104 Eligibility requirements.

(a) An eligible producer is the owner of a portion or all of the domestically-produced sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR part 12, regulations governing crop insurance at 7 CFR part 400, or the regulations governing controlled substance violations at 7 CFR part 718.

(b) A sugar beet or sugarcane processor is eligible for loans if the processor agrees to all the terms and conditions in the loan application and the note and security agreement.

(c) Sugar pledged as collateral during the crop year:

(1) May not exceed the quantity derived from processing domestically-grown sugar beets or sugarcane from eligible producers during the applicable crop year;

(2) Must be processed and owned by the eligible processor and stored in suitable storage;

(3) May not have been processed from imported sugarcane, sugar beets, or molasses;

(4) Must have been processed in the United States or Puerto Rico; and

(5) Must have processor certification in the loan application that the sugar is eligible and available to be pledged as collateral.

(d) Sugar must meet the following minimum quality requirements to be eligible to be pledged as loan collateral:

(1) Refined beet sugar to be pledged as loan collateral must be:

(i) Dry and free flowing;

(ii) Free of excessive sediment; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic which would impair its merchantability or which would impair or prevent its use for normal commercial purposes.

(2) Raw cane sugar to be pledged as loan collateral must be:

(i) Of reasonable grain size;

(ii) Free from excessive color or moisture; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic which would impair its merchantability or which would impair or prevent its use for normal refining or commercial purposes.

(3) Sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such syrup or molasses or would impair or prevent the use of such syrup or molasses for normal commercial purposes.

§ 1435.105 Availability, disbursement, and maturity of loans.

(a) To obtain a loan, a processor must:

(1) File a loan request, as CCC prescribes, no earlier than October 1 and no later than June 30 of the applicable crop year, with the State committee of the State where such processor is headquartered, or with a county committee designated by the State committee;

(2) Execute a note and security agreement as CCC prescribes; and

(3) Pay CCC a loan service fee in connection with the disbursement of each loan. The Executive Vice President, CCC, will determine and announce the service fee amount.

(b) If there are any liens or encumbrances on sugar pledged as collateral for a loan, the processor must obtain waivers that fully protect CCC's interest even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after the loan is approved.

(c) No loan proceeds may be disbursed until the sugar has actually been processed and is otherwise established as being eligible to be pledged as loan collateral.

(d) A processor may, within the loan availability period, repledge as collateral sugar that previously served as loan collateral for a repaid loan.

(1) In making application for such loan, the processor shall:

(i) Specify that the loan collateral should be treated as a quantity of eligible sugar that previously served as loan collateral for a repaid loan; and

(ii) Designate the loan to which the reoffered loan collateral was originally pledged.

(2) The subsequent loan shall have the same maturity date as the original loan.

(3) Loan collateral repledged that was previously redeemed from CCC is not included in determining the total quantity of sugar on which loans have been obtained for purposes of § 1435.104.

(e)(1) Disbursements shall be made without regard to the actual polarity of the sugar pledged as loan collateral but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope.

(2) Adjustments for polarity are only made at the time of loan forfeiture.

(f)(1) Loans will mature at the earlier of:

(i) the end of the 9-month period beginning on the 1st day of the first month after the month in which the loan is made; or

(ii) September 30 following disbursement of the loan.

(2) CCC may accelerate loan maturity dates in accordance with § 1435.107(g).

(g)(1) Notwithstanding any other provision of this subpart, relative to sugar processed from sugar beets or sugarcane that normally is harvested during July, August, and September, a processor:

(i) May obtain a loan on such sugar;

(ii) Must settle the loan by September 30 following disbursement; and

(iii) May request a supplemental recourse or nonrecourse loan, depending on which type of loan is in effect according to § 1435.102.

(2) Such supplemental loan:

(i) Shall be requested by the processor during the following October;

(ii) Shall be at the loan rate in effect at the time the supplemental loan is made; and

(iii) Shall mature in 9 months minus the number of whole months that the initial loan was in effect.

§ 1435.106 Loan maintenance.

(a) All processors receiving loans shall:

(1) Abide by the terms and conditions of the loan application and the note and security agreement; and

(2) Pay interest on the principal at a rate determined in part 1405.

(b) The security interests obtained by CCC as a result of the execution of security agreements by the processors of sugarcane and sugar beets shall be superior to all statutory and common law liens on raw cane sugar and refined beet sugar in favor of the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.

(c) Nonrecourse loan recipients shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processor for processing not less than the minimum payment levels CCC specifies for the applicable crop year when nonrecourse loans are in effect, except that processors who repay a recourse loan within the 30-day period provided for in § 1435.102(b) are not required to pay the minimum payment levels.

(d) A processor shall maintain eligible sugar of sufficient quality and quantity as collateral to satisfy the processor's loan indebtedness to CCC. CCC shall not assume any loss in quantity or quality of the loan collateral.

(1) The borrower is responsible for storage costs through the loan maturity date.

(2) Sugar pledged as loan collateral need not be stored identity preserved.

(3) When the proceeds of the sale of the sugar pledged as loan collateral are needed to repay all or part of a sugar loan, the processor may request and obtain prior written approval from the loanmaking office by executing a Market Authorization for Loan Collateral (form CCC–681–1) to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer prior to repayment of the loan. Any such approval shall be subject to the terms and conditions set forth in the applicable form and the loanmaking office shall not approve such a request unless the buyer of the sugar agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding the sugar being sold. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the sugar; or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(4) If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for a recourse or nonrecourse loan is less than the loan quantity, because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call the loan and other outstanding loans. Such determination shall result in the processor being ineligible for recourse loans for the remainder of that crop year and through the next crop year.

§ 1435.107 Loan settlement and foreclosure.

(a) A processor may, at any time prior to loan maturity, redeem all or any part of the loan collateral by paying CCC the applicable principal and interest.

(b) Recourse loan recipients must pay CCC the principal and interest on the loan and redeem their sugar collateral no later than the loan maturity date.

(c) Forfeiture will be accepted as payment in full of the principal and interest due under a nonrecourse loan, applicable to the quantity of sugar delivered, subject to adjustment for polarity, if the processor:

(1) Notifies in writing the appropriate loanmaking office of the processor's intent to forfeit the loan collateral, states the amount of loan collateral intended to be forfeited, and delivers the notice to the loanmaking office no later than 30 days prior to the maturity date of the loan;

(2) Executes a storage agreement, as CCC prescribes, prior to forfeiture or delivers the loan collateral to a CCC-approved storage facility upon forfeiture; and

(3) Pays the following forfeiture penalty on sugar pledged as collateral at the time of forfeiture:

(i) The penalty for raw cane sugar is 1 cent per pound; and

(ii) The penalty for beet sugar is 1.072 cents per pound; and

(4) Reduces payments owed producers by the producer's share of the aggregate loan forfeiture penalty incurred by the processor. The producer's share of the aggregate loan forfeiture penalty is calculated as the producer's share of the net selling price of the processor's sugar, provided for explicitly or implicitly in the contract between producers and processor, times the aggregate loan forfeiture penalty.

(d) Even though a processor gave notice of intent to forfeit, the processor may, at any time prior to maturity of the nonrecourse loan, redeem the loan collateral in accordance with this section.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of:

(1) the amount specified in the notice of intent to forfeit; or

(2) the quantity of sugar which is shown on the note and security agreement minus any quantity that was redeemed or released for removal in accordance with this section.

(f) If the processor does not redeem any amount of the nonrecourse loan collateral and the conditions of paragraph (c) of this section have been fulfilled, the unredeemed nonrecourse loan collateral will, without further CCC or processor action, be deemed to have been forfeited and delivered to CCC in-store at the processor's storage facility on the day following the maturity date of the loan. Title, all rights, and interest to the sugar immediately vests in CCC upon delivery.

(g)(1) CCC may at any time accelerate the date for loan repayment indebtedness, including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(2) In the event of any such acceleration of nonrecourse loans, the required notice of intent to forfeit, as set forth in paragraph (d)(1), may be given at any time prior to the accelerated maturity date.

(h) If a processor's recourse or nonrecourse loan indebtedness is not satisfied in accordance with the provisions of this section:

(1) Interest on the processor's indebtedness shall accrue as specified in part 1403 in this chapter and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale; and

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges incurred by the CCC.

§ 1435.108 Storage facility requirements.

(a) Sugar forfeited to CCC must be delivered in or to a CCC-approved storage facility.

(1) Eligible storage is any storage facility which:

(i) Meets CCC Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (part 1423 of this chapter); and

(ii) Is placed under a storage contract with CCC.

(2) If the sugar is delivered in or to an ineligible storage facility, the processor is responsible for all costs incurred in moving the sugar to an eligible storage facility.

(b) CCC has the right to inspect loan collateral or CCC-owned sugar and the storage facilities in which the sugar is situated at any time.

(c) Regardless of whether CCC inspected the sugar and storage facility prior to delivery, the processor is liable to CCC for any damages CCC suffers if:

(1) The processor delivers ineligible sugar to CCC; or

(2) The processor delivers sugar into ineligible storage.

§ 1435.109 Processor storage agreement.

(a) By executing a note and security agreement, the processor agrees to store any forfeited loan collateral on behalf of CCC under the terms and conditions specified in this subpart and any storage agreement entered into between CCC and the processor. Should the terms of these regulations and the terms of the storage agreement conflict, the terms set forth in the regulations are applicable.

(b) The storing processor is responsible for maintaining the quality and condition of CCC-owned sugar. The processor is liable to CCC for any damages CCC suffers due to the failure of the processor to load out sugar meeting the criteria set forth in § 1435.104(d). Also, the processor shall store the sugar in the eligible storage where delivered for as long as CCC deems necessary.

(c) If a processor forfeits loan collateral and CCC and the processor fails to enter into a storage contract, the processor is responsible for all costs incurred in moving the sugar to an eligible storage facility.

(d) A processor storing CCC-owned sugar is responsible for all load-out expenses in the event that CCC sells the sugar.

(e) CCC shall make monthly storage payments to the processor for the period of time the processor stores the forfeited sugar. The storage payment rate shall be as CCC and the processor agree, and according to the terms and conditions CCC sets forth when executing a note and security agreement.

§ 1435.110 Miscellaneous provisions.

(a) The regulations issued by the Secretary governing setoffs and withholding set forth at part 3 of this title and part 1403 of this chapter are applicable to the program set forth in this subpart.

(b) A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations at 7 CFR part 780.

(c) Any false certification, including those made for the purpose of enabling a processor to obtain a loan to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

§ 1435.111 Applicable forms.

CCC forms used for this program are available from the appropriate State committee or designated county committee. For purposes of any CCC form that refers to program participation by producers, the term ''producer'' shall be taken to mean ''processor.''

Subpart C—Sugar Marketing Assessments

§ 1435.200 General statement.

(a) This subpart sets forth the terms and conditions for the payment to CCC of marketing assessments for beet sugar and raw cane sugar marketed during fiscal years 1996 through 2003.

(b) The marketing assessment applies to:

(1) First processor marketings of all raw cane sugar processed during fiscal years 1996 through 2003 from domestically-produced sugarcane or sugarcane molasses, and

(2) First processor marketings of all beet sugar processed during fiscal years 1996 through 2003 from domestically-produced sugar beets or sugar beet molasses.

§ 1435.201 Marketing assessment rates.

(a) For marketings during fiscal year 1996, the assessment rate per pound of beet sugar is 0.2123 cents per pound. The assessment rate for fiscal years 1997 through 2003 is 0.2654 cents per pound.

(b) For marketings during fiscal year 1996, the assessment rate per pound of raw cane sugar is 0.1980 cents per pound, raw value. The assessment rate for fiscal years 1997 through 2003 is 0.2475 cents per pound, raw value.

§ 1435.202 Remittance.

(a) The monthly amount of the beet sugar marketing assessment to be remitted to CCC is determined by multiplying the number of pounds of beet sugar marketed in the calendar month by the assessment rate.

(b) The monthly amount of the marketing assessment on raw cane sugar to be remitted to CCC is determined by multiplying the number of pounds, raw value, of raw cane sugar marketed, or estimated to be marketed in accordance with (e)(1) of this section, in the calendar month by the assessment rate.

(c)(1) First processors shall remit marketing assessments to CCC no later than the 30th calendar day following the end of the month in which the beet sugar or raw cane sugar subject to the assessment was marketed.

(2) Mailed remittances will be considered timely if they are postmarked not later than the 25th calendar day following the month in which the beet sugar or cane sugar subject to the assessment was marketed.

(3) CCC must receive electronic remittances by the 30th calendar day following the month in which the beet sugar or raw cane sugar subject to the assessment was marketed.

(4) Any processor who fails to file a remittance by the due date shall be assessed a civil penalty and interest in accordance with § 1435.203.

(d)(1) First processors shall prepare and submit a fully and accurately completed form CCC–80 each month that shows:

(i) Beet sugar marketings during the previous calendar month; and

(ii) Raw cane sugar, raw value, marketings during the previous calendar month.

(2) First processors who do not operate on a calendar month basis may pay their assessments based on marketings on several extra days or fewer days than the calendar month reporting period, consistent with the processor's standard accounting period. However:

(i) Assessments must be paid on all marketings of specific crop year sugar in the fiscal year it is due; and

(ii) The marketing assessments must be remitted monthly and by the dates specified in this section.

(3) The entire assessment that is due and payable shall be remitted with the Form CCC–80.

(e)(1) If, when a raw cane sugar assessment is due and payable, the first processor cannot determine the exact raw value of such sugar, an estimate of raw value based on the recent experience of the processor shall be made and the assessment submitted on the estimated quantity.

(2) Whenever an assessment is based on an estimate of raw value pursuant to (e)(1), any necessary adjustments to the quantity of raw sugar subject to the assessment shall be made by filing a corrected Form CCC–80 no later than 30 calendar days after the last day of the month in which the estimated assessment was paid. If, according to the corrected Form CCC–80:

(i) The assessment was underpaid, the first processor shall remit the additional assessment due with the corrected Form CCC–80, and

(ii) If the assessment was overpaid, the first processor shall subtract the overpayment from any assessment due at the time the corrected Form CCC–80 is filed, or if none is due at that time, from the assessment next due.

(f) By October 30 of each year, first processors shall determine the quantity of beet sugar or raw cane sugar on hand that was produced during the preceding

fiscal year but not marketed by September 30 of such preceding fiscal year and shall remit a marketing assessment to CCC as if the sugar had been marketed in September of such preceding fiscal year. Such sugar is not subject to a second assessment when it is marketed.

(g) First processors shall send remittances and CCC–80 forms as CCC specifies.

§ 1435.203 Civil penalties and interest.

(a) A first processor is liable for a civil penalty of up to 100 percent of the relevant national average loan rate times the marketings of beet sugar or raw cane sugar involved in the violation if the processor:

(1) Fails to remit, on a timely basis, the entire amount of any marketing assessment in accordance with this subpart;

(2) Fails to submit Form CCC–80 fully and accurately completed; or

(3) Fails to maintain and permit inspection of records as required by § 1435.204.

(b) In addition to any civil penalty assessed in accordance with this section, interest on unpaid assessments or deficiencies in assessments paid is due and payable at the rate specified in part 1403 of this chapter beginning on the 1st day of the month after the marketing assessment was due in accordance with § 1435.203. Interest shall continue to accrue until such amount is paid. However, if full payment of an assessment is received within 30 calendar days of the date on which the assessment was due, no interest shall apply.

(c) The Controller, CCC, shall assess civil penalties and interest.

(d) Affected first processors may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification by the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW, Washington, D.C. 20250–0501.

(e) After reconsideration, affected first processors may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification by the Executive Vice President, CCC, of an affirmation of the assessment of civil penalties, with the National Appeals Division in accordance with part 780 of this chapter.

§ 1435.204 Refunds.

Marketing assessments are nonrefundable. However, upon presentation of evidence acceptable to the Controller, CCC, adjustments to an assessment may be made by CCC to reflect the actual marketings of beet sugar or raw cane sugar, or a first processor may adjust the amount of the assessment due in accordance with § 1435.202.

Subpart D—Information Reporting and Recordkeeping Requirements

§ 1435.300 General statement.

(a) Every sugar beet processor, sugarcane processor, and cane sugar refiner shall report, on a monthly basis on CCC required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer sugar programs.

(b) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining regional loan rates.

(c) The sugar information reporting and recordkeeping requirements of this subpart are administered under the general supervision of the Executive Vice President, CCC.

§ 1435.301 Civil penalties.

(a) Any processor or refiner who willfully fails or refuses to furnish the information, or who willfully furnishes false data required under § 1435.300, is subject to a civil penalty of no more than $10,000 for each such violation.

(b) The Controller, CCC, shall assess civil penalties and interest.

(c) Affected first processors may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification by the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW, Washington, D.C. 20250–0501.

(d) After reconsideration, affected first processors may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification by the Executive Vice President, CCC, of an affirmation of the assessment of civil penalties, with the National Appeals Division in accordance with part 780 of this chapter.

PART 1446—PEANUTS

43. The authority citation for part 1446 is revised to read as follows:

Authority: 7 U.S.C. 7271; 15 U.S.C. 714b and 714c.

44. Section 1446.101 is amended by revising the first and second sentences of the section to read as follows:

§ 1446.101 General statement.

This part sets out provisions relating to the 1996 through 2002 crops of peanuts as authorized and in accordance with the applicable provisions of Public Law 104–127. The peanut marketing, storage, handling and disposition requirements for peanuts for the 1991 through 1995 crops shall continue to be governed by the regulations codified in this part 1446 as of January 1, 1996. * * *

45. In § 1446.103, the definition of ''eligible producer'' is amended by redesignating paragraph (4) as paragraph (5) and adding a new paragraph (4) in its place, and paragraph (1) of the definition of ''support rate'' is revised to read as follows:

§ 1446.103 Definitions

* * * * *

Eligible producer. An eligible producer for purposes of price support under this part shall be a person who meets all of the following criteria:

* * * * *

(4) The person has not marketed 100 percent of a quota peanut crop that meets the quality requirements for domestic edible use, through a marketing association for the 2 marketing years immediately preceding the current marketing year, if handlers have provided the producer with written offers, upon delivery, for the purchase of all the quota peanuts, at a price equal to or in excess of the quota support price. If a producer is rendered ineligible for quota price support under this or any other provision, the producer may appeal the ineligibility determination utilizing procedures provided in part 780 of this title.

* * * * *

Support rate.—(1) *National average.* The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, shall be $610.00 per ton. The national average price support rate for additional peanuts, for each of the 1996 through 2002 crops, shall be the rate announced by the Secretary.

* * * * *

46. In § 1446.203, paragraph (b) is revised to read as follows:

§ 1446.203 Marketing card entries and collection of assessments, penalties and debts.

* * * * *

(b) *Farmers Home Administration or Farm Service Agency lien.* If a Farmers Home Administration or Farm Service Agency lien has been recorded on the marketing card that was issued for the use of a producer when marketing peanuts, the purchaser of such peanuts shall make the check, for the proceeds

from such peanuts, payable jointly to the producer and the Farm Service Agency. However, if a peanut poundage quota lien was also recorded on the marketing card against such producer, the check shall be made payable jointly to the producer, CCC and the Farm Service Agency.

47. Section 1446.307 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1446.307 Disaster transfer of Segregation 2 or Segregation 3 peanuts from additional loan to quota loan.

* * * * *

(b) *Limitation of amount eligible for transfer.* A transfer made in accordance with this section shall not exceed the smaller of:

(1) The difference between:

(i) The total quantity of Segregation 1 peanuts marketed from the farm, plus the amount of peanuts retained on the farm for seed or other use, and

(ii) The effective farm poundage quota, excluding quota pounds transferred to the farm in the fall; or

(2) Twenty-five percent of the effective farm poundage quota, excluding quota pounds transferred to the farm in the fall.

* * * * *

(d) *Loan value for transferred peanuts.*—(1) *Segregation 2 peanuts.* The quota loan value for any lot of Segregation 2 peanuts transferred from an additional loan to a quota loan shall be determined by multiplying 70 percent of the quota loan rate that otherwise would have been applicable for such lot of peanuts as quota peanuts, exclusive of any discount for damaged kernels, by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 2 peanuts transferred in accordance with this section.

(2) *Segregation 3 peanuts.* The quota loan value for any lot of Segregation 3 peanuts transferred from an additional loan to a quota loan shall be determined by multiplying 70 percent of the quota loan rate that otherwise would have been applicable for such lot of peanuts as quota peanuts, exclusive of any discount for damaged kernels, by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 3 peanuts transferred in accordance with this section.

* * * * *

48. Section 1446.308 is amended by revising paragraphs (a), (d) and (e)(1), removing paragraph (f), and redesignating paragraph (g) as paragraph (f) to read as follows:

§ 1446.308 Loan pools.

(a) *Establishment of pools.*—(1) Each marketing association shall establish six separate loan pools; one for each of the three segregations of additional peanuts and one for each of the three segregations for quota peanuts. These pools shall be formed without regard to the type of peanuts (Runner, Virginia, Spanish, or Valencia) involved. However, the SWPGA shall also establish 12 separate loan pools for Valencia peanuts produced in New Mexico, namely, for bright hull peanuts and for dark hull peanuts separately, to include for each of them separate, by segregation, additional peanuts and quota peanuts pools. Each marketing association shall maintain separate, complete and accurate records for each loan pool that is established by the marketing association.

(2) *Eligibility to participate in New Mexico Pools.*

(i) *In general.* Except as provided in clause (a)(2)(ii) of this section, in the case of the 1996 and subsequent crops, Valencia peanuts not physically produced in the State of New Mexico shall not be eligible to participate in the pools of the State even if the farm on which the peanuts are produced is constituted for administrative purposes within the State of New Mexico.

(ii) *Exception.* A producer of Valencia peanuts may enter Valencia peanuts that are physically produced in Texas into the pools for New Mexico in a quantity not greater than the average annual quantity of the peanuts that the producer entered into the New Mexico pools for the 1990 through 1995 crops; however, to qualify, the peanuts must be produced on the same farm on which the peanuts were produced during the base years of 1990 through 1995.

* * * * *

(d) *Recovery of losses in quota area loan pools.*—(1) If the loan indebtedness on the peanuts in a quota area pool exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered using the following sources in the following order of priority:

(i) Proceeds due any individual producer from any pool, as a result of the transfer of peanuts for pricing purposes from an additional loan pool to a quota loan pool, pursuant to the provisions in § 1446.307.

(ii) Gains of any producer in the same pool, by the amount of pool gains attributed to the same producer from the sale of additional peanuts for domestic and export edible use.

(iii) Gains or profits resulting from the sale of additional peanuts, other than Valencia peanuts produced in New Mexico in separate type pools established under paragraph (a) of this section, in the same marketing area for domestic edible use, that are owned or controlled by CCC. This paragraph shall not apply to gains or profits from the sale of peanuts that were produced on farms with 1 acre or less of peanut production.

(iv) Marketing assessments, collected from producers under § 729.316 of this title, that the Secretary determines are necessary to cover losses in area quota pools.

(v) Gains or profits from quota pools in other marketing areas, other than separate type pools established under paragraph (a) of this section for Valencia peanuts produced in New Mexico.

(vi) Gains or profits resulting from the sale of additional peanuts in other marketing areas, other than Valencia peanuts produced in New Mexico in separate type pools established under paragraph (a) of this section, for domestic edible use, that are owned or controlled by CCC. This paragraph shall not apply to gains or profits from the sale of peanuts that were produced on farms with 1 acre or less of peanut production.

(vii) Marketing assessments, collected from handlers under § 729.316 of this title, that the Secretary determines are necessary to cover losses in area quota pools.

(viii) Increased marketing assessments on quota peanuts in the production area covered by the pool, which shall be assessed as needed and collected from producers under § 729.317 of this title.

(2) The exceptions provided for Valencia peanuts in paragraph (d)(1) of this section shall only apply as to prevent offsets between pools for each of the Valencia types (bright-hull and dark-hull) for New Mexico and other peanuts.

* * * * *

(e) *Pool distribution.*—(1) Net gains as determined in accordance with this section on peanuts in each area pool shall be distributed to each producer who placed peanuts in that pool in proportion to the dollar value of peanuts placed in such pool by that producer, except that the proceeds available for the amount of distribution shall be subject to any other conditions and offsets set forth in this section; and

* * * * *

49. Section 1446.401 is amended by revising paragraph (a)(1) to read as follows:

§ 1446.401 Contracts for additional peanuts for crushing or export.

* * * * *

(a) *Contract form and addendum.*—(1) *Contract form.* In order to be approved by the county committee, the contract must be completed on Form CCC–1005, Handler Contract With Producers for Purchase of Additional Peanuts for Crushing or Export, or on a form approved by the Executive Vice President, CCC, or designee, which follows the organization of the CCC–1005 and contains as a minimum all of the requirements provided for in paragraph (c)(2) of this section.

* * * * *

50. Section 1446.410 is amended by revising paragraph (b) to read as follows:

§ 1446.410 Disposition date.

* * * * *

(b) *Extension of final disposition date.* The final disposition date for an individual handler may be extended by the marketing association to November 30 of the year following the calendar year in which the crop was grown if, by the final disposition date identified in paragraph (a) of this section, the handler files a written request with the marketing association that specifies the number of pounds for which an extension is requested.

51. Part 1468 is revised as follows:

PART 1468—WOOL AND MOHAIR

Authority: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

§ 1468.1 Termination.

The price support program for wool and mohair was terminated at the conclusion of the 1995 marketing year. The regulations setting forth the applicable terms and conditions for the Wool and Mohair Program for the 1995 and prior marketing years found at part 1468 of this title as of January 1, 1996, shall be applicable to determinations made with respect to the administration of payments outstanding on or after July 18, 1996.

Dated: July 3, 1996.

Dan Glickman,

Secretary of Agriculture.

Dated: July 3, 1996.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 96–17486 Filed 7–12–96; 11:39 am]

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Thursday
July 18, 1996

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1005, et al.

Milk in the Carolina and Certain Other Marketing Areas; Tentative Decision on Proposed Amendments To Marketing Agreements and Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011, and 1046

[Docket No. AO–388–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Tentative Decision on Proposed Amendments To Marketing Agreements and Orders

7 CFR Part	Marketing area	Docket No.
1005	Carolina	AO–388–A9
1007	Southeast	AO–366–A38
1011	Tennessee Valley	AO–251–A40
1046	Louisville-Lexington-Evansville.	AO–123–A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative partial decision proposes, on an emergency basis, amendments to four Federal milk orders in the Southeastern United States. The amendments would establish a transportation credit balancing fund from which to reimburse handlers for the cost of importing bulk milk into these markets for fluid use when milk supplies that are normally associated with these markets are insufficient to meet fluid needs. The amendments also would establish a monthly assessment to maintain the solvency of the fund and a methodology for computation of the transportation credits. The proposed rules are based upon proposals that were considered at a public hearing held May 15–16, 1996, in Charlotte, North Carolina. Producers in the affected areas will have an opportunity to vote on the interim amendments before they go into effect.

DATES: Comments must be submitted on or before August 19, 1996.

ADDRESSES: Comments (4 copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, 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 Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities. No new entities will be regulated as a result of the proposed rules and any changes experienced by handlers will be of a minor nature.

The amended orders will promote orderly marketing of milk by producers and regulated handlers by providing transportation credits to assist them in bringing supplemental milk to the market for fluid use. The record of this proceeding indicates that supplemental milk is regularly imported into the Southeastern United States, that the burden of cost for providing this service has been increasing, and that it falls unevenly among the handlers and dairy farmers operating in these markets.

There will be a modest assessment on handlers to provide funds for the proposed new transportation credits, which will be used to reimburse handlers for the costs that they incur, but this assessment will not exceed 6 cents per hundredweight of Class I producer milk. The assessment will be reduced or waived completely once the balance in the transportation credit balancing fund is sufficient to cover the sum of six months' credits. The 6-cent per hundredweight assessment translates to about one-half cent per gallon of milk.

At present, all handlers regulated under the 4 milk orders involved in this proceeding file a monthly report of receipts and utilization with the market administrator. The proposed amendments resulting from this proceeding will only add 2 lines of information to this report. However, only those handlers applying for transportation credits on supplemental milk will have to provide this additional information to the market administrator. The estimated time to collect, aggregate, and report this information, which is already compiled for other uses, is less than 15 minutes per month.

The net impact of the proposed amendments on dairy farmers should be insignificant. Some dairy farmers may experience a reduction in their blend price during the first year that the new rules are in effect. This reduction, which should amount to less than 5 cents per hundredweight, will occur only if the balance in the transportation credit balancing fund is insufficient to cover the current month's transportation credits. Once the fund has been fully endowed, dairy farmers would experience no reduction in the uniform price as a result of transportation credits.

The preamble of this tentative decision clearly explains to all handlers and dairy farmers in these markets how the new provisions will work. The market administrator will send a copy of this decision to each handler, cooperative association, and nonmember dairy farmer covered by these orders. In addition, the market administrator's office is accessible by telephone for any additional questions that may arise during regular business hours.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed 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 request 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 May 1, 1996; published May 3, 1996 (61 FR 19861).

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreements and 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 (7 CFR Part 900), in Charlotte, North Carolina, on May 15–16, 1996. Notice of such hearing was issued on May 1,

1996, and published May 3, 1996 (61 FR 19861).

Interested parties were given until May 28, 1996, to file post-hearing briefs on the proposals as published in the Federal Register and as modified at the hearing. Comments also were requested on whether the proposals should be considered on an emergency basis.

Interested parties may file written exceptions to this tentative decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250 by the 30th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The material issues on the record of the hearing relate to:

1. Transportation credits for supplemental bulk milk received for Class I use.

2. Deductions from the minimum uniform price to producers.

3. Whether emergency marketing conditions in the 4 regulated marketing areas warrant the omission of a recommended decision with respect to Issue No. 1 and the opportunity to file written exceptions thereto.

This tentative partial decision only deals with Issues 1 and 3. Issue 2 will be handled through normal rulemaking procedures in a forthcoming recommended decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Transportation Credits for Supplemental Bulk Milk Received for Class I use

Federal Milk Orders 1005, 1007, 1011, and 1046 (hereinafter referred to as ''the 4 orders'') should be amended to provide a transportation credit for supplemental bulk milk that is transferred from an other order plant to a pool plant during the months of July through December. A credit also should be provided to those handlers who import supplemental bulk milk for fluid use directly from producers' farms. For plant milk, the credit should be limited to milk that is allocated to Class I and should be computed at a rate equal to 3.7 cents per 10 miles per cwt. or fraction thereof from the transferor plant to the transferee plant. The credit should be reduced to the extent that the Class I price at the transferee plant exceeds the Class I price at the transferor plant.

In the case of milk received directly from producers' farms, the origination point of a bulk tank truck containing more than one producer's milk should be the city closest to the farm from which the last farm pickup was made. Alternatively, the origination point may be the location specified on a certified weight receipt obtained at an independently operated truck stop after the last farm pickup has been made. The credit should be computed by multiplying 3.7 cents times the number of 10-mile increments between the origination point and the location of the plant receiving the milk, less any positive difference in the Class I prices at the two points under the order receiving the milk.

A transportation credit for bulk milk received from an other order plant for Class I use was proposed by Mid-America Dairymen, Inc., a cooperative association that represents approximately 50 percent of the producers in Orders 5, 7, and 11, and nearly one-third of the producers in Order 46.

A spokesman for Mid-Am testified that: (a) The Southeast states are chronically short of milk for fluid use at certain times of the year and this shortage will be particularly acute during the upcoming summer and fall months; (b) the Federal order Class I pricing structure will not accommodate the movement of milk from surplus markets to deficit markets; (c) the burden of supplying the 4 Southeast markets with supplemental milk for fluid use falls disproportionately on the cooperative associations serving these markets; (d) the Agricultural Marketing Agreement Act provides for ''marketwide service payments'' to provide for greater equity between producers and handlers supplying a market with supplemental milk during short production months; and (e) therefore, the Secretary should immediately amend the 4 orders effective July 1, 1996, to provide relief to those handlers who will be relied upon to provide supplemental milk to meet the fluid needs of consumers in the area.

The General Manager of Carolina Virginia Milk Producers Association (CVMPA), a cooperative association with producers supplying plants regulated under all 4 orders, testified in support of Mid-Am's proposed transportation credits but stated that the proposal should be expanded to include supplemental milk received directly from producers' farms. The spokesman testified that during the period from July through December 1995, CVMPA imported more than 19 million pounds of plant milk at a transportation cost of 307 thousand dollars. During that same period, however, CVMPA imported more than 38 million pounds of supplemental producer milk directly from farms at a cost of 528 thousand dollars, he said.

The CVMPA spokesman testified that supplemental milk shipped directly from producers' farms can often be purchased at lower cost than plant milk. He also noted that this farm-shipped milk is often of better quality because it requires less handling. He concluded that the orders should be amended to give handlers the economic incentive to transport milk in the most efficient manner.

A spokesman for Milk Marketing, Inc. (MMI), a cooperative association supplying handlers under Orders 11 and 46, testified in opposition to the Mid-Am proposal as it relates to Order 46. The MMI spokesman stated that MMI opposed the proposal on the basis that over-order charges would be a better method of obtaining reimbursement for the costs associated with importing milk into the market for fluid use. Also, he said that MMI did not support the proposal because it did not provide a transportation credit for bulk supplemental milk shipped directly from producers' farms to plants. However, he said that if the Department should adopt Mid-Am's proposal, it should be expanded to include supplemental milk received directly from producers' farms. Receiving milk in this manner, he explained, would encourage hauling efficiencies, improve milk quality, eliminate pump-over expenses, and reduce product loss due to handling.

Select Milk Producers, Inc., a New Mexico dairy cooperative that provides supplemental milk to the Southeast markets, endorsed the suggestion of CVMPA and MMI to provide transportation credits for farm-to-plant milk as well as plant-to-plant milk.

The Mid-Am proposal also received a qualified endorsement from Fleming Dairy. The spokesman for Fleming, which operates pool distributing plants in Nashville, Tennessee, and Baker, Louisiana, suggested that Mid-Am's proposal be modified to restrict transportation credits to the months of July through October instead of July through December. He also suggested eliminating the provision proposed by Mid-Am that would permit credits during the months of January through June if the Class I utilization during the month is higher than 80 percent.

The Fleming spokesman stated that during the months when transportation credits are in effect, Class III–A pricing in these markets and in the surrounding markets should be suspended. At the present time, he said, the presence of Class III–A pricing in these markets significantly adds to the cost of obtaining supplemental milk because cooperatives and fluid milk processors have to bid this supplemental milk away from butter-powder plants.

A spokesman for Land O' Sun Dairies, Kingsport, Tennessee, Milkco, Inc., Asheville, North Carolina, and Hunter Farms, Charlotte and High Point, North Carolina, also offered constructive criticism of the Mid-Am proposal. The spokesman suggested that handlers seeking reimbursement for transportation costs should be required to show that they, in fact, incurred the cost. If the actual transportation cost was less than the credit provided in the order, a handler should only receive reimbursement for the cost actually incurred. He also questioned whether the proposed 3.9 cents per 10 miles accurately represented the cost of transporting bulk milk and he criticized the proposal for not restricting transportation credits on the movement of bulk milk between the 4 orders involved in this proceeding. Finally, the witness suggested borrowing funds from the producer-settlement fund reserve, instead of the marketwide pool, when the proposed transportation credit balancing fund contains an insufficient balance to cover a month's transportation credits.

Several proprietary handlers testified in opposition to the proposed transportation credits. The president of Southern Belle Dairy, Somerset, Kentucky, stated that handlers make choices in arranging for their milk supplies and the Federal order program should not be called upon to ''absolutely level the playing field.'' He said the proposed 6-cent assessment for the transportation credit balancing fund would put Southern Belle at a competitive disadvantage with its competitors in Indiana, Virginia, West Virginia, and Ohio. He also stated that it will promote inefficient movements of milk by giving regional cooperatives the opportunity to divert regional milk supplies to Florida and then replace those supplies with supplemental milk at handlers' expense. Finally, he criticized the proposal for not including the suspension of Class III-A pricing.

The Director of Milk Procurement for Dean Foods Company, Franklin Park, Illinois, also testified in opposition to the Mid-Am proposal. He said that negotiation between buyer and seller was the best vehicle to recover costs and that proprietary handlers that purchase all or part of their milk supply from independent producers should not be expected to pay into a transportation pool to assure a milk supply for processors who choose to purchase their milk from a ''marketing agency.'' The proposed amendments, he said, could create false shortages and force fluid processors to make unnecessary payments into a transportation pool for the sole benefit of cooperatives.

The vice president of finance for Holland Dairies, Holland, Indiana, also testified in opposition to the proposal. The witness stated Holland Dairies has developed its own milk supply from independent producers and, as a result, carries the risk of balancing this milk supply during the flush and short seasons of production. He said that while the proposed transportation credits would cost Holland Dairy a considerable amount of money, it would provide no apparent benefit to Holland Dairy. He concluded that suppliers of milk in the Southeast voluntarily chose to do business in that region and should therefore be required to manage their business accordingly.

Briefs. Several briefs were filed following the hearing. A brief from the Kroger Company indicates Kroger's opposition to the transportation credit proposal. Kroger states in its brief that ''* * * a temporary situation should not be used as justification for a permanent change in the order which would allow the use of pool money to cover the cost of transportation * * * the current system has worked in the past and will continue to do so in the future.''

Holland Dairies, Inc., in its brief, reiterated its opposition to the transportation credit proposal. Holland stated that ''it is completely unfair to independent handlers and processors to legislate that they are required to pay into a fund that only a cooperative can draw funds from.'' (It appears from this statement that Holland has misconstrued the proposal. As proposed, and as adopted herein, transportation credits would be available to any handler that brings supplemental milk into the market. Accordingly, should Holland Dairy run short of milk during the months of July through December, it could import milk from Wisconsin or Michigan, for example, and receive a transportation credit for such milk.)

While conceding that the Southeast has always been in a deficit position, Holland maintains that handlers should pay for supplemental milk through premiums outside of the order. Holland is also concerned that stair stepping of milk to markets farther south will occur and that normal deliveries should be excluded from receiving a transportation credit.

Holland also argues in its brief that handlers should have a choice of buying milk from a cooperative association or from independent producers. It states that the proposed transportation credits would eliminate this choice.

Holland contends that Order 46 should not be part of the proposed transportation credit because it is far removed from deficit areas in Georgia and Florida. Finally, it states that if a transportation credit is implemented, it should not apply for the first 250 miles.

A brief filed on behalf of the Fleming Company states that the proposed transportation credits are compellingly supported by the evidence in this proceeding. Fleming, however, reiterates its suggestion that the credits be limited to the months of July through October and suggests a further limitation based upon mileage or source of supply. The handler again expresses a concern about Class III—A pricing and suggests that it be suspended when supplemental milk is needed in the Southeast. Fleming urges the Secretary to act on an emergency basis to adopt the proposal.

A brief was also filed on behalf of Land O' Sun Dairies, Milkco, Inc., and Hunter Farms. The plants of these handlers are regulated under Orders 5 and 11.

These handlers note in their brief that ''the record discloses a disturbing trend in raw milk production and fluid consumption in the Southeastern United States * * * raw milk production has not been keeping pace with consumption in the Southeast.'' While desiring to maintain a local dairy industry in the Southeast, they recognize that ''some considerations must be made for obtaining fluid milk supplies from non-local sources when that milk is needed.''

The brief of these handlers indicates that they are not opposed to adoption of a modified transportation credit proposal. They are concerned, however, that the provision not be abused. For this reason, they offer several suggestions to prevent abuse. One suggestion is to exclude bulk shipment of milk between the 4 orders from receiving any transportation credits. (This suggestion has been adopted in this decision.)

Another suggestion of these handlers is to establish historical movements of milk from these 4 orders to the 3 Florida orders. If a handler or a cooperative association shipped anything more than these historical shipments to Florida

and, at the same time, imported milk into the market from which these Florida shipments originated, the new or replacement milk would not qualify for a transportation credit.

These 3 handlers state that they are opposed to a provision in the Mid-Am proposal that would permit transportation credits during the months of January through June if a market's Class I utilization exceeds 80 percent. The basis for their opposition, according to their brief, is that some parties may try to manipulate the Class I utilization in one or more of these markets, causing some handlers to pay an assessment for transportation credits while their competitors in one or more of the other 4 markets involved in this proceeding do not.

Taken to its logical conclusion, the position of these 3 handlers seems to be that this provision should be administered as if the 4 separate markets were, in fact, one market. This would have to be so because the only way that the assessment for the transportation credits can be uniform among the 4 individual orders is if the transportation credits given out each month are proportionately the same in each market. It is unlikely that this will be the case since the Class I utilization does vary among the 4 markets. It is conceivable that during some months Orders 5, 7, or 11 may need supplemental milk, while Order 46 may not. Thus, transportation credits and assessments for transportation credits would be applicable under Orders 5, 7, and/or 11, but not Order 46.

The 3 handlers also state that transportation credits should not apply for the first 100 miles of shipment and that the credit should be something less than the proposed 3.9 cents per 10 miles. They also suggest borrowing money from the producer-settlement fund reserve, rather than the producer-settlement fund itself, when transportation credits exceeds the available funds in the transportation credit balancing fund. In support of this idea, they state that local milk production has suffered enough and payments to producers should not be reduced further by taking money out of the producer-settlement fund.

The brief of the 3 handlers supports the proposal of CVMPA to allow farm-to-plant supplemental milk to qualify for a transportation credit. However, they suggest limiting this milk to dairy farms located outside of the 4 marketing areas.

Finally, the 3 handlers express their concern about the possible exclusion of Order 46 from the transportation credit proposal. If this were to happen, they state, it would disrupt the competitive relationship among competing handlers in Orders 5, 11, and 46.

A brief was received on behalf of Select Milk Producers (SMP), a cooperative association based in Artesia, New Mexico. The brief states that SMP expects to market milk in the Southeast marketing area in the fall of 1996 and therefore requests that transportation credits be extended to farm-to-plant milk as well as to plant-to-plant milk.

SMP states that they concur with MMI's suggestion regarding the application of transportation credits for farm-to-plant supplemental milk. SMP suggests that supplemental milk be defined as milk that was not associated with any of the 4 markets during the prior months of January through July.

Southern Belle Dairy, Somerset, Kentucky, reiterated their opposition to the transportation credit proposal for Order 11 in its brief. Southern Belle states that it bears the full cost of its milk supply and that it has made private arrangements to solve any problem that might arise. It also contends that the proposal would reduce their competitive relationship vis-a-vis handlers in other markets and that the Tennessee Valley order does not need the transportation credits. Finally, it states that Florida is an integral part of the deficit problem in the Southeast and, accordingly, should be included in the solution to the problem.

Southern Belle concludes that the proposed transportation credits are simply a money-shifting scheme whereby dairies such as itself that have developed an independent supply of milk over a long period of time will be forced to subsidize other dairies who have not invested in these relationships which would ensure a steady supply of milk.

Gold Star Dairy, Little Rock, Arkansas, also filed a brief in opposition to the proposed transportation credits. This handler maintains that there is no need for supplemental milk in the western part of the Southeast market, and that, in those parts of the marketing area where supplemental milk is being brought in, cooperatives are now being compensated through over-order charges.

Gold Star argues that it has little in common with plants in the eastern part of the marketing area; it does not share a common supply area with them; it is only technically part of the Southeast market because it is within the defined marketing area; it is already paying for marketwide services through over-order charges; and that if, notwithstanding these arguments, the Secretary should adopt the proposed transportation credits, the assessment to fund the credits should not be based on Class I sales made outside the marketing area.

In its brief, Carolina-Virginia Milk Producers Association offers several suggestions for implementing its modified proposal, which would provide transportation credits for supplemental milk supplied to the market directly from producers' farms. The cooperative supports a prohibition on credits for milk moving between the 4 markets, as well as the proposed hauling rate of 3.9 cents per 10 miles. CVMPA also endorses a suggestion made at the hearing to borrow funds from the producer-settlement fund reserve, rather than the producer-settlement fund itself, when there are insufficient funds in the transportation credit fund to cover a current months' credits. It states that the reserve fund could be paid back in future months for the money that is borrowed.

With respect to the mechanics of providing transportation credits for farm-to-plant milk, CVMPA suggests defining ''supplemental milk'' as the milk of dairy farmers which is pooled only during the period of market shortage. Specifically, it suggests that transportation credits not be available to a dairy farmer who was a producer on any of the 4 markets ''for more than 35 days during more than 8 months in the previous July–June period.''

To determine the origination point for farm-to-plant milk, CVMPA suggests using the county courthouse closest to the farm of the last producer whose milk is on the load. It also suggests subtracting any positive difference between the Class I price at the receiving pool plant and the Class I price at the origination point in computing the net transportation credit. This treatment would make the transportation credit computation virtually identical for transfers of plant milk and direct farm-to-plant deliveries.

Finally, CVMPA suggested the requirement that receiving handlers provide the market administrator with a list of the producers for whom transportation credits are requested.

Milk Marketing, Inc., filed a brief reiterating its opposition to the transportation credit proposal for Order 46 only. It maintains that over-order pricing is the best method for handling additional costs associated with importing milk to the market for fluid use. MMI states that if the Department should nevertheless adopt a transportation credit provision for Order 46, the provision should include an extension of the credit to cover supplemental milk shipped directly from farm to plant. Several of the

safeguards mentioned in the brief are similar to those already described with respect to CVMPA's brief.

Mid-America Dairymen, Inc., submitted a lengthy brief setting forth the historical background for the hearing, pertinent facts and figures brought out in the hearing record, the legislative history for the marketwide service payment provision contained in the Agricultural Marketing Agreement Act, a review of past agency decisions concerning transportation credits, and a comprehensive review of the arguments supporting its proposal.

Several points brought out in Mid-Am's brief are particularly noteworthy and should be emphasized. Mid-Am points out once again that a disproportionate share of the supplemental milk that is brought into the Southeast markets is brought in by the cooperative associations serving these markets. It argues that the costs incurred in importing this milk cannot simply be passed on to their customers because it would put these customers at a competitive disadvantage with other handlers who are fortunate enough to have adequate supplies of locally-produced milk to meet their needs.

Mid-Am contends that the cost of supplying these markets with surplus milk puts their member producers at a disadvantage compared to non-member producers who do not share in this cost. The cooperative also points out that when these markets are short of milk, it shuts down its manufacturing plants, which adds to its cost. It notes, for instance, that during the months of July through December 1995, it shut down its facilities in Louisville, Kentucky, Lewisburg, Tennessee, and Franklinton, Louisiana.

In its review of the legislative history of the Food Security Act of 1985, the foundation for the marketwide service provision in § 608c(5)(J) of the Act, Mid-Am notes that Congress sought to achieve equity between producers or handlers who bear service costs that benefit the market and those who do not. It included an excerpt from one of the committee reports (reprinted at 1985 U.S. Code Congressional and Administrative News 1103), which appears to be particularly relevant to the proposal at hand. It reads: ''* * * At the moment, there are three major problems with respect to the operation of the Federal order systems: (1) minimum Federal order Class I prices are not adequate to attract the necessary supply to meet the Class I needs in deficit areas; (2) handlers who must go outside their territory to acquire additional milk incur greater costs for milk than handlers who obtain all of their milk from the local area; and (3) those producers who assume the responsibility of supplying the needs of the market have to pay the cost of transporting supplemental milk, resulting in producers not receiving uniform prices.'' Mid-Am argues that its proposal for transportation credits conforms to the equity-promoting goals described in the legislative history.

Mid-Am also argues that its proposal conforms with past agency decisions. Among many quotes included in its brief is the following from a final decision issued October 8, 1987, incorporating permanent transporting credits in the Chicago Regional order (52 FR 38240): ''* * * a major purpose of the order program is to assure an adequate supply of pure and wholesome milk for the fluid market and to establish and maintain orderly marketing conditions. This includes adopting order provisions to facilitate securing adequate supplies of milk to meet the market's fluid needs. The record shows that obtaining adequate milk for those needs is not being accomplished in an orderly and equitable fashion under the current order provisions.''

Mid-Am states that the suggested modifications of MMI and CVMPA to provide transportation credits for farm-to-plant milk should be given favorable consideration by the Secretary. It urges the Secretary to incorporate appropriate safeguards, however, to ensure that no artificial economic advantage is created for supplies that are not normally associated with the market.

Mid-Am notes that the supply/demand situation in the Southeast has become particularly acute in recent months. It emphasizes that the shortage this summer and fall will likely be even worse than in 1995, pointing to reduced production during the first 4 months of 1996, compared to a year earlier, especially in Tennessee and Kentucky, 2 important supply areas for the Southeast. It also notes that the Olympic Games that will be held in Atlanta this summer will likely increase consumer demand for fluid milk. It urges the Secretary to issue an expedited decision that would allow the transportation credits to be effective by July 1, 1996.

Conclusion. Testimony and exhibits introduced at the hearing indicate that the Southeastern United States has a chronic shortage of milk for fluid use in the summer and fall months, which often extends into the winter months. This shortage has been worsening over time as milk production has declined and population has increased, and this trend is likely to continue, exacerbating the problem of obtaining a sufficient supply of milk for fluid use in an orderly and equitable manner. Under current arrangements, the costs of obtaining an increasing supply of supplemental milk are not being borne equally by all handlers and producers in each of the 4 orders. The service provided by handlers, particularly, cooperative associations, in obtaining sufficient supplies of milk is a service of marketwide benefit for which the Secretary is authorized to include provisions in Federal milk orders to compensate handlers. The record of this hearing demonstrates that disorderly marketing conditions exist because of the significantly different costs that are incurred by handlers who provide the additional service versus those who do not. The increasing magnitude of the disproportionate sharing of costs is jeopardizing the delivery of adequate supplies of milk for fluid use. Thus, the record justifies the adoption of these provisions to restore stability and order in providing adequate supplies of milk for fluid use for Orders 5, 7, 11, and 46, as explained below.

Data in the record of this hearing show that the area covered by Orders 5, 7, 11, and 46 is a highly seasonal, deficit milk production area. As shown in Table 1, milk production in the 12 Southeast states of Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, and West Virginia has fallen from 15.4 billion pounds in 1988 to 14.5 billion pounds in 1995. Based upon this trend, production in the year 2000 is expected to be 13.1 billion pounds.

TABLE 1.—MILK PRODUCTION AND POPULATION IN 12 SOUTHEASTERN STATES 1988–2010

Year	Population	Production (lbs.)
1988	57,961,000	15,432,000,000
1989	58,732,000	15,356,000,000
1990	59,266,000	15,505,000,000
1991	60,265,000	15,362,000,000
1992	61,090,000	15,499,000,000
1993	61,926,000	15,310,000,000
1994	62,767,000	14,994,000,000
1995	63,573,000	14,554,000,000
2000	66,876,000	13,114,000,000
2005	70,471,000	11,603,000,000
2010	74,066,000	10,092,000,000

Source: Population—U.S. Bureau of the Census.
Milk Production—*Milk Production*, NASS, USDA, Washington, DC.

The bar graph below compares quarterly production in the 12 Southeastern states during the past 4 years. It shows that quarterly production is down from the previous year's quarter

for the past 4 years. The graph also shows that not only has production decreased for 4 consecutive years, but that such decreases have occurred at an accelerating rate. Furthermore, the graph demonstrates that the degree of seasonality between the relatively flush and short production months has also been increasing.

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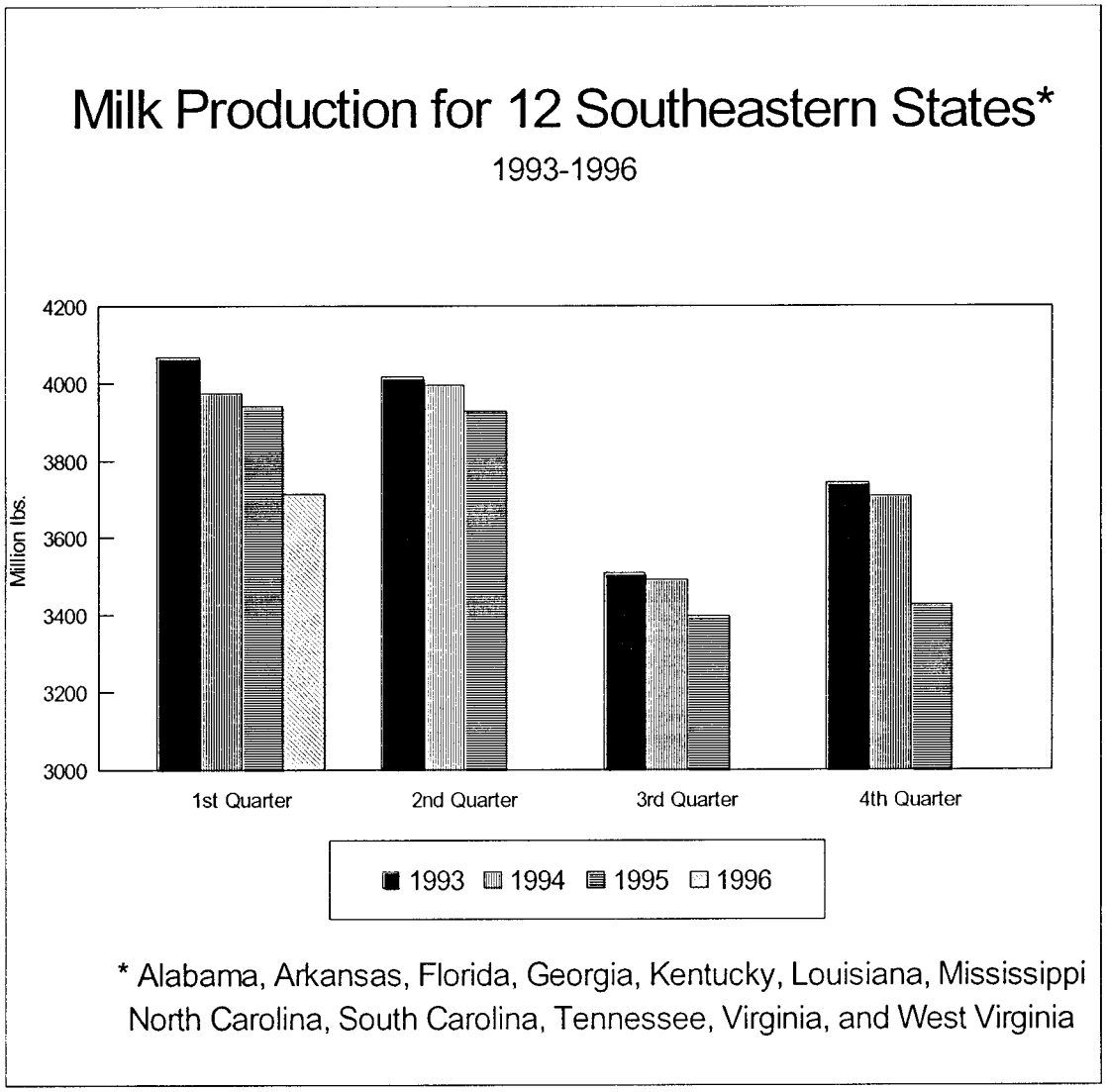

Source: Milk Production - Milk Production, NASS, USDA, Washington D.C.

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While production in the Southeast has been declining, the population of this area has been rising. As shown in Table 1, the population of the 12 Southeastern states rose from 57.9 million in 1988 to 63.5 million in 1995. By the year 2000, population is expected to reach 66.8 million.

Data in the record indicates that the per capita consumption of all dairy products in the 12 Southeastern states has grown in the past 7 years, from 568 pounds (milk equivalent) per capita in 1988 to 582 pounds in 1995. Conservatively estimating no growth in the per capita consumption of fluid milk products in the next 10 years, the deficit in Southeast milk production will grow significantly based upon population growth alone. According to Census Bureau data, 16 states will gain more than 1 million persons by the year 2020; 7 of these states are covered at least in part by the milk orders involved in this proceeding. There clearly is no question concerning the continuing—and, in fact, growing—need to import supplemental milk into the Southeastern United States for fluid use.

The record shows that the production decline and the population increase has resulted in an increasing Class I utilization in these 4 markets. During the period from April 1995 to April 1996, producer milk pooled under the 4 orders decreased by 42 million pounds. At the same time, the Class I utilization of producer milk under the 4 orders increased by almost 13 percentage points to 77.5 percent. It undoubtedly would have increased even more except for the fact that the milkshed continues to expand in a northerly and westerly direction to more and more distant farms. In this regard, it should be noted that milk has been regularly flowing into the Southeast markets from Texas and New Mexico, and there are indications that such shipments will start sooner than ever this summer.

These markets are tightest during the late summer and fall months. The Class I utilization reached 86.1%, 85.5%, 83.7%, and 80.2% in Orders 5, 7, 11, and 46, respectively, during August 1995. This compares to 84.0%, 83.3%, 85.1%, and 73.8%, respectively, one year earlier. Percentages of this magnitude indicate a very tight market situation when taking into consideration the bottling schedule of fluid milk plants, the desire of handlers to make some Class II products locally, and the unavoidable need to process some local milk into storable manufactured products, particularly on weekends when it is not needed for fluid use.

It is impossible to reveal precisely the total amount of supplemental milk needed by these markets because of restrictions on the release of confidential data (i.e., data represented by less than 3 handlers). In addition, much of the supplemental milk that is needed entered these markets directly from the farms of dairy farmers who are not regular suppliers of these markets. With these shortcomings taken into consideration, market administrator data entered in the record for Orders 5, 11, and 46 show that bulk receipts of other order milk for Class I use increased from 13.1 million pounds in 1993 to 49.6 million pounds in 1995. For these 3 markets, the data also show that first quarter receipts of bulk other order milk for Class I use is running at more than 10 times the level of 1995.

It is difficult to compare similar data for Order 7 to earlier periods because several markets were merged into the present Southeast marketing area in July 1995. Thus, shipments which formerly would have been other order bulk transfers are now transfers between pool plants within the order. Nevertheless, treating the merged order as if it were still 5 separate orders and comparing the other order bulk receipts for Class I use in 1995 to 1993 indicates a more than twofold increase in such receipts.

Data entered into the record by Mid-Am shows that during the months of July through December 1995 more than 100 million pounds of other order bulk receipts were transferred into Orders 5, 7, 11, and 46. According to Mid-Am, the cooperative also brought in supplemental producer milk on a direct-ship basis. The record data also show that while Mid-Am represents 47 percent of the producer milk pooled under the 4 markets, it accounted for more than 70 percent of the other order bulk milk that was brought into these markets during the months of July through December 1995.

Exhibits entered by CVMPA show that the cooperative imported more than 19 million pounds of other order plant milk during the months of July through December 1995, while at the same time bringing in more than 38 million pounds of supplemental milk directly from producers' farms. The exhibits show that the transportation cost for these supplemental purchases were nearly one million dollars.

A detailed breakdown of Mid-Am's interorder transfers during the months of July and August 1995 shows the location of the transferor plant and the transferee plant, the mileage between the two plants, the total cost of hauling the milk, and the freight rate broken down into 10-mile increments. During July and August 1995, the exhibit shows that the average hauling cost for this milk was 3.7 cents per 10 miles.

The Mid-Am spokesman testified that Mid-Am was proposing a hauling credit of 3.9 cents per 10 miles due to increasing fuel costs in recent months, justifying a slightly higher credit.

After carefully reviewing the record testimony and data, it is concluded that a transportation credit for supplemental milk during the seasonally short period of July through December is fully justified for this year's milk shortage and on a continuing basis, as needed, for future years. Such a credit will restore market order and provide the opportunity for all handlers to bring in supplemental milk when needed for fluid use.

While handlers opposed to the incorporation of these credits in the orders argue that reimbursement for transportation costs should be handled outside the order, experience has shown that this is not always possible. The absence of reimbursement for the costs of providing supplemental milk by cooperatives in this area last summer and fall demonstrate very well what can happen in a competitive market situation. Over-order pricing does not always ensure either stability or uniform costs among handlers. Also, premiums can disappear as quickly as they are introduced even when markets are desperately short of milk because of the pressure to maintain uniform costs among competing handlers.

Over-order pricing has been used in these markets in the past to equalize costs among handlers, but the industry was much different than it is today. There are now far fewer, but larger, fluid processing plants operating in these markets, creating daily and weekly demands to which the market's suppliers must react. On the supply side, the number of cooperative associations has decreased dramatically in the last decade. Consequently, only a few organizations are incurring costs in providing balancing services for these markets and the amount of milk being handled is far greater than the quantity of milk handled by any single cooperative in prior years. For this reason, it is imperative that the cooperatives and handlers providing balancing services for the benefit of the entire market be fairly compensated for these costs to ensure that an adequate supply of milk is available for fluid use.

In fact, the current market is not meeting the standard of orderly marketing. Markets which, at times, are short of milk must have some structure to provide for sharing the costs in the movement of supplemental milk to processors. Otherwise, orderly

marketing conditions can deteriorate and all handlers will not be competing for a supply of milk on an equal footing.

Under current market conditions, producers supplying these markets are also negatively affected. Producers who are members of cooperative organizations incurring the costs of supplemental milk are forced to bear the costs unfairly relative to nonmember producers.

The Agricultural Marketing Agreement Act recognized that disorderly markets can occur in a market when there are no standards which all segments of the market must satisfy. In this case, such standards must apply to all milk supplied to the regulated market. When the market fails to provide this equity, it becomes necessary for the order structure to provide the system.

As indicated, over-order premiums may be used to serve this purpose. This record clearly indicates, however, that such is not the case in these markets. The record, in fact, clearly indicates that the supplemental milk supplies, as they are currently being handled, are creating disorder. It is, therefore, proper that the regulations be amended to restore order to the system by equitably allocating the costs associated with obtaining supplemental milk supplies.

The adoption of transportation credits will enable handlers to make decisions involving supplemental milk supplies with a greater degree of certainty and be assured that the equity required by the Act is provided.

Congress recognized the inequities that can and do occur in supplying markets with supplemental milk and provided the Secretary of Agriculture with certain tools to handle these problems. The record of this hearing clearly demonstrates a need for these remedies in the 4 orders involved in this proceeding. Moreover, the production and population statistics justify the incorporation of these tools on a permanent basis so that they can be used when needed. The alternative approach, which some handlers appear to favor, is to hold a hearing and temporarily amend the orders each time a crisis occurs. However, as last fall's crisis demonstrated, it is very difficult to hold hearings and amend orders after these problems already have occurred. It is much better to anticipate the problems and have provisions that can be used as needed. Accordingly, the permanent incorporation of provisions to facilitate the importation of supplemental milk to these deficit markets is the most prudent course of action to follow and is fully supported by the record of this hearing.

The amendments adopted in this tentative decision are similar to those proposed by Mid-Am, but also differ in several respects. First, the transportation credits should be limited to the months of July through December. It should not include other months when the Class I utilization is over 80 percent because handlers would not know until after the month is over whether or not they would be eligible for a transportation credit on bulk milk brought into the market.

A better approach during the months of January through June would be to simply give the market administrator the authority to expand the transportation credit period if market conditions indicate that producer milk for Class I use will be in short supply and the marketwide Class I utilization is likely to exceed 80 percent. The market administrator is in an excellent position to review such a request, which should be made in writing at least 15 days prior to the beginning of the month for which it is to be effective.

Upon receiving a request to extend the transportation credit period, the market administrator will notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. The market administrator's notice to interested parties also may invite comments on other remedies that may be available including, but not limited to, an increase in the supply plant shipping percentage as provided in §§ 1005.7(b), 1007.7(f), and 1011.7(b)(4) and, in the case of Order 7, the desirability of adjusting diversion limitations as provided in § 1007.13(d)(9). Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

The provisions adopted in this decision also differ slightly from Mid-Am's proposal with respect to plant-to-plant shipments that are eligible for transportation credits. As proposed by Mid-Am, Class I bulk transfers from any other order plant would qualify for transportation credits. As adopted in this decision, however, the credits are limited to plants that are outside of the marketing areas of Orders 5, 7, 11, and 46.

There was a great deal of concern expressed at the hearing about ''stair stepping'' milk from one market to another. For instance, if milk from Order 11 was transferred to Order 7 while at the same time supplemental milk was brought into Order 11 from Order 46, handlers in Order 11 conceivably could be contributing funds to replace milk that, if not sent to Order 7, would have been available to Order 11 handlers.

This issue can be quite complex, particularly in large markets, such as the Southeast market. It may very well make economic sense to ship surplus milk from one part of a market (for example, southern Louisiana in the Order 7 marketing area) to another market that is short of milk (for example, the Upper Florida market) while during the same day bring in bulk milk for a handler in another part of the marketing area (for example, Fleming Dairy in Nashville) from another order plant (other than from one of the 4 orders involved in this proceeding). Given the order's current pricing structure, it is unrealistic to expect milk from southern Louisiana, where the Class I differential price is $3.58, to be shipped north to Nashville, where the Class I differential price is $2.55.

The attached order amendments place no restriction on the the interorder shipment of milk among the 4 markets, but they do not provide transportation credits for such shipments. The record of this hearing supports a restriction of credits to milk that is truly supplemental to the market. For this reason, transportation credits should be restricted to bulk shipments from plants outside of these 4 marketing areas. Data and testimony in the record indicate that nearly all of the supplemental milk needed for these 4 markets comes from plants located outside of the 4 marketing areas anyway, so that the restriction should not be a major problem for handlers in locating supplemental milk. Moreover, handlers may still obtain plant milk from within the 4 orders; they simply would not be able to get a transportation credit for such milk.

Another departure from the original Mid-Am proposal concerns the milk eligible for the transportation credit. It was apparent from hearing testimony and briefs that other cooperatives operating in these markets are more apt to supply the market with supplemental milk on a direct-ship basis rather than transferring milk from an other order plant. Such cooperatives include CVMPA, MMI, and Select Milk Producers. The testimony was convincing that permitting a credit on such imports would be more equitable to those organizations that are unable to import plant milk, would promote efficiencies in bringing supplemental milk directly from producers' farms, would result in better quality milk because unnecessary pumpovers are eliminated, and would result in less milk lost due to reduced handling.

While the inclusion of farm-to-plant milk is a logical extension of the transportation credit concept, there are some practical problems to overcome in implementing such a provision. One of the first problems that arises in constructing a transportation credit on farm-to-plant milk is distinguishing a market's regular producer milk from its supplemental producer milk on which the credit would apply.

A primary consideration in distinguishing the market's regular producers from the supplemental producers is the location of producers' farms. It is reasonable to conclude that the markets' regular producers are located reasonably close to the plants receiving their milk. Thus, such producers' farms are likely to be within the geographic marketing areas defined in each order. Accordingly, transportation credits should not apply to any producer whose farm is located within any of the 4 marketing areas. This provision was suggested by MMI and should be adopted.

Not all of the pool distributing plants regulated under these orders are located within the defined marketing areas. For example, a pool distributing plant regulated under Order 5 is located in Lynchburg, Virginia, which is outside of the Order 5 marketing area. In such a case, some other location criteria is needed to distinguish a regular producer from a supplemental producer.

In its suggested language, MMI proposed restricting supplemental producers to those who are more than 85 miles from Louisville or Lexington, Kentucky, or Evansville, Indiana. This proposal should be adopted but expanded to cover all pool distributing plants within or outside of the 4 marketing areas. In other words, farm-to-plant milk that is eligible for a transportation credit must be produced on a farm that is outside of the 4 marketing areas and at least 85 miles away from the plant to which the milk is delivered.

In addition to considering the geographic location of a dairy farm for the purpose of determining whether milk from that farm is supplemental to a market's needs, attention should be focused on whether milk from that farm is regularly associated with the market or is shipped to the market as needed.

As noted earlier, MMI in its brief stated that transportation credits should not apply to the milk of a dairy farmer who was a producer under Orders 5, 6, 7, 11, 12, 13, or 46 during more than 8 months in the previous July through June period or if more than 32 days' production of the producer was received as producer milk under these orders during the entire 12-month period. CVMPA's brief contained a similar proposal but did not include Orders 6, 12, and 13 (the 3 Florida orders) and specified 35 days' production, rather than 32, for the prior 12-month period.

These proposals should not be adopted. As proposed, if a dairy farmer was a producer on one of these markets for more than 8 months in the previous July through June period, the dairy farmer could not be considered as a supplemental producer under another one of the 4 markets. For example, if a dairy farmer from Texas was a producer under Order 11 during the months of January through September 1996, that dairy farmer would be ineligible to receive a transportation credit under Order 7 in October 1996, even though the dairy farmer's farm meets the location criteria set forth in this decision for a supplemental producer and the dairy farmer was never previously associated with Order 7.

It is questionable whether the provisions of one order should be based on a dairy farmer's association with another order. Each order should stand on its own. Accordingly, the determination as to whether a producer is regularly associated with a market or is, in fact, only seasonally associated with the market should be based on the dairy farmer's association with that market alone.

Since the need for supplemental milk generally drops off sharply after the month of December—1996 being an exception—in all of these markets and does not reappear, usually, until the month of July, it is reasonable to conclude that the milk of a producer who is located outside of any of these marketing areas generally would not be needed during the months of January through June, but might be needed starting in July. It is also logical that the milk of a supplemental producer would not be needed each day but perhaps once or twice a week. Accordingly, if a dairy farmer was a regular supplier of the market during January through June—i.e., a ''producer'' on the market for more than 4 of those months—the milk of such a dairy farmer should not be considered supplemental milk during the following months of July through December. It would be unduly restrictive to disqualify a dairy farmer for shipping a limited amount of milk during one or two months of the January through June period, however, because even the months of January and June can be short months in the Southeast. Therefore, the provision should be flexible enough to accommodate some shipments to the market during the January through June period. Specifically, a dairy farmer should not lose his/her status as a supplemental producer if his/her milk is shipped to a market for not more than 2 months of the January through June period. However, shipments during this period should be of a limited duration, so not more than 32 days' production may have been received as producer milk during the two months of the January through June period in which the dairy farmer was a producer on the market.

Having established the criteria to distinguish a supplemental producer from a regular producer, attention must now focus on the provisions needed to establish the transportation credit for farm-to-plant supplemental milk. The first question that arises in this regard is the determination of the origination point for the load of milk. Two problems arise. First, there may be more than one dairy farmer's milk on the truck. Second, even if a dairy farmer can fill up an entire truck with milk, his or her farm may be impossible to pinpoint on a map.

This decision adopts two alternatives to determine the origination point for a load of farm-to-plant milk. First, after filling the tank truck with farm milk, the hauler may elect to stop at an independently operated truck stop to obtain a certified weight receipt identifying the truck, the gross weight of the loaded truck, the time and date, and the location of the truck stop. This certificate would be turned over to the pool plant operator receiving this load of milk and, in turn, be made available to the market administrator for verification of the information. Truck stops with scales are commonly found along major highways and in small towns and cities. Thus, it would be neither time-consuming nor expensive to fulfill this requirement.

Alternatively, if the hauler does not obtain a certified weight receipt to establish an origination point, the market administrator will determine the location of the farm of the last load of milk that was added to the truck, locate the nearest city, and compute the mileage from that city to the receiving pool plant for purposes of determining the mileage. If this alternative understates the mileage involved to the plant, the hauler can easily obtain a certified weight receipt if that would result in a more accurate transportation credit.

Traditionally, provisions in Federal milk orders have used the county courthouse as a basing point to determine mileage. In their briefs, MMI and CVMPA suggested using the county courthouse closest to the farm of the last producer on the route to establish the

origination point for a load of farm-to-plant milk. The reason for not adopting this suggestion is that there are now more precise ways of measuring the mileage between various points using any of several computer mapping programs that are available in addition to more traditional standard highway mileage guides that are available to the market administrator. By specifying ''city'' rather than ''county courthouse,'' in conjunction with providing the option of establishing location based upon a certified weight receipt, we hope to achieve greater precision in establishing the mileage between the last producer's farm and the plant to which the milk is delivered.

This decision adopts the proposed transportation credit balancing fund concept proposed by Mid-Am, as well as a monthly assessment on Class I milk to provide revenue for the fund. It differs from the proposal, however, in using the higher of the hauling credits distributed in the immediately preceding 6 months or in the preceding July–December period for purposes of determining the current month's assessment level in § 100X.81(a). This was done to ensure that the fund will have a sufficient balance to meet the markets' needs when credits start to be distributed in the month of July. As proposed by Mid-Am, if no credits were distributed during the months of January through June, no new assessment would be warranted. Therefore, the yardstick to measure the assessment level would begin to decline in January and, if no new credits were given out, would be zero by July. This depletion of the fund could jeopardize its usefulness and require the market administrator to transfer funds for transportation credits from the producer-settlement fund.

This should only be done as a last resort. It will be less likely to occur by using the alternative yardstick approach adopted in this decision for determining the minimum balance needed in the transportation credit balancing fund.

The market administrator is authorized to maintain the transportation credit balancing fund, deposit assessments into it, and distribute transportation credits from it. Payments due from a handler will be offset against payments due to a handler.

The use of a transportation credit balancing fund will permit assessments that are needed for the transportation credits to be spread out throughout the year. This will permit the assessment rate to be kept at a lower and more stable level. It will also allow handlers to reflect the assessment in their pricing plans. At the maximum level permitted, the 6-cent assessment represents about one-half cent of the raw product cost of a gallon of milk.

In its brief, Gold Star Dairy suggested exempting from the assessment Class I sales made outside of the 4 marketing areas. This suggestion should not be adopted. While such an exemption might put Gold Star in a more favorable position with competitors in other markets, such as the Texas marketing area, it would not be fair to those handlers with whom Gold Star competes in the Southeast marketing area, its primary sales territory. Moreover, if supplemental milk is brought into any one of the 4 markets to supply a handler, there is no reason why that handler should not bear its fair share of the transportation costs for such milk, regardless of where the handler may eventually sell it.

The market administrator will announce the assessment for the transportation credit balancing fund on the 5th day of the month preceding the month to which it applies. Accordingly, on the 5th day of December, the assessment would be announced for January. An exception to this rule should be made during the first month that transportation credits are in effect because otherwise all of the first month's transportation credits would have to come out of pool funds. Accordingly, for the first month that these rules are in effect, the assessment for the transportation credit balancing fund will be announced no later than the Federal Register publication date of the interim order amending the orders. For example, if the interim order amending the orders is published on July 1, 1996, handlers will be notified of the assessment for July on, or a few days before, that day. On July 5, handlers will be notified of the assessment for August.

For the first 3 months that these amendments are effective, the assessment for the transportation credit balancing fund should be 6 cents per hundredweight. It is necessary to specify a rate in Section 81(c) of the attached orders because there is no 6-month credit distribution history from which to determine it, as provided in paragraph (a) of Section 81.

It is possible that during the first year that these provisions are in effect, and possibly thereafter under unusual conditions, it may be necessary to transfer funds from the producer-settlement fund to pay the transportation credits that are distributed. Transferring funds from the producer-settlement fund will result in lower uniform prices to producers. For this reason, several parties suggested, instead, borrowing from the producer-settlement fund reserve and paying back the reserve fund in future months from transportation credit assessments that are collected.

The market administrator maintains a producer-settlement fund (psf) reserve equal to approximately 4–5 cents per hundredweight of producer milk in the pool. This reserve is used to pay audit adjustments and other unforseen expenses.

The suggestion to borrow from the reserve is no doubt well-intentioned, but the alternative of transferring funds from the psf itself is the better approach for several reasons.

First, the reserve fund is maintained as a cushion to provide ready cash for audit adjustments and other unforseen expenses that arise. Depleting this reserve to pay for transportation credits, even for a temporary period of time, would not be prudent.

Second, we appreciate the concerns of those who do not want to reduce the blend price to producers to pay for transportation credits, but we believe that this transfer of funds may only be necessary during the first year that this provision is in effect. Thereafter, there should be adequate funds in the transportation credit balancing fund to pay for future transportation credits.

Third, by transferring funds from the psf, rather than borrowing the funds from the psf reserve, it will not be necessary to postpone the disbursement of credits, as might be necessary under the alternative approach suggested by Milkco and others. To the extent that reimbursement for transportation expenses is postponed, certain handlers will be disadvantaged relative to others who did not incur such expenses.

Finally, by transferring funds from the psf, rather than borrowing the funds from the psf reserve, producers will be sharing with handlers the cost of supplying the market with supplemental milk. This will help to minimize the assessment to handlers during months when transportation credits are not needed because the current month's assessments will not be used to pay back funds borrowed from the psf reserve for prior months but, instead, will be used to pay only current months' credits or to build up the transportation credit balancing fund for future months.

At this hearing, concern was once again expressed about the difficulty of obtaining supplemental milk when the Class III–A price is allegedly providing a profitable market for manufacturers of nonfat dry milk. A proposal was made to suspend Class III–A pricing while transportation credits are in effect.

As noted earlier, Mid-Am testified that it shut down its butter-powder plants in these 4 markets during the months of July through December 1995. Therefore, to the extent that handlers were competing with butter-powder plants for supplemental milk, it was not supplemental milk in these 4 markets.

The proposal to suspend Class III–A pricing in other markets goes beyond the scope of this hearing. Therefore, the proposals to suspend such pricing must be denied.

Several handlers criticized the proposed transportation credits for not including the Florida markets. They argued that since the Florida markets are the markets most in need of supplemental milk, it is unfair that handlers in those markets do not have to pay the assessment for the transportation credit balancing fund.

There was no testimony at this hearing concerning the current premium structure in the Florida markets. It is a known fact, however, that the Florida markets are 100 percent cooperatively supplied and that the premium structure in those markets as of the September 1995 hearing was markedly different (and much higher) than the premium structure prevailing in Orders 5, 7, 11, and 46.

Whether or not the Florida markets have the type of transportation credits adopted in this decision is immaterial to the need for such provisions in Orders 5, 7, 11, and 46. Given the tight supply situation prevailing in the Florida markets, it is unlikely that any Florida handler would have a pricing advantage over a handler regulated under one of the 4 markets involved in this proceeding. Moreover, since cooperative associations control the entire supply of milk in the Florida markets, those markets do not have to deal with the difficult issue of unequal sharing of the cost of supplying the market with supplemental milk (i.e., the member versus nonmember issue).

The absence of a transportation credit in Florida does not mean that handlers in Orders 5, 7, 11, and 46 will bear the cost of providing supplemental milk to Florida. To the extent that milk is shipped to Florida from any of the 4 markets involved in this proceeding, such milk likely would have been shipped with or without Florida's participation in the current hearing.

3. Whether Emergency Marketing Conditions in the Four Regulated Areas Warrant the Omission of a Recommended Decision and the Opportunity to File Written Exceptions Thereto With Respect to Issue 1

The omission of a recommended decision was proposed by the Mid-Am spokesman. He also requested that the issue be handled on an expedited basis, but suggested that the Secretary may wish to issue a tentative final decision to provide another opportunity for comments and adjustments to the amendments. No testimony was received in opposition to the request.

The due and timely execution of the functions of the Secretary under the Act imperatively and unavoidably require the omission of a recommended decision and an opportunity for written exceptions with respect to Issue No. 1. The continued orderly marketing of milk in the respective areas requires that the attached order be made effective as soon as possible, since the amount of supplemental milk needed for Class I use in each of the four orders is expected to increase significantly during the summer and fall months. Handlers, cooperative associations, and others should know promptly and with certainty how the Department is proposing to facilitate the importation of supplemental milk so that arrangements may be made.

It is therefore found that good cause exists for omission of a recommended decision and the opportunity for filing exceptions to it. As noted earlier, however, this decision is being issued as a tentative final decision. What this means is that producers will vote on the amendments to the 4 orders just as they would with a normal final decision. However, interested parties will have 30 days from the Federal Register publication of this tentative final decision to comment on it. After the comment period is over, the Department will then issue a final decision, and producers will again have an opportunity to vote on the orders as amended.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreements and orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) 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 aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and are in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be 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.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof is an Interim Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. It is hereby ordered that this entire decision and order amending the orders be published in the Federal Register. Parties who desire to enter into a marketing agreement covering the terms and conditions of the attached interim order may request a marketing agreement from the market administrator of the respective order.

Determination of Producer Approval and Representative Period

April 1996 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of the individual orders (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

It is hereby directed that a referendum be conducted to ascertain producer approval in the Louisville-Lexington-Evansville marketing area. The referendum must be conducted and completed on or before the 30th day from the date that this decision is issued in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended, and as hereby proposed to be amended, regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the marketing area.

The agent of the Secretary to conduct such referendum is hereby designated to be Arnold M. Stallings.

List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

Dated: July 12, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

Interim Order Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

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

(a) Findings. 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 of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid 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 regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Proposed Interim 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 amended, as follows:

The authority citation for 7 CFR Parts 1005, 1007, 1011, and 1046 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. In § 1005.30, paragraphs (a) and (c) are revised to read as follows:

§ 1005.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1005.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, for which a transportation credit is requested pursuant to § 1005.82;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to § 1005.82(c)(2);

(7) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1005.40(b)(1); and

(8) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph (a).

* * * * *

(c) Each handler described in § 1005.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a) (5) and (6) of this section.

* * * * *

2. Section 1005.61 is amended by redesignating paragraphs (a)(4), (a)(5), (b)(5), and (b)(6) as paragraphs (a)(5), (a)(6), (b)(6), and (b)(7), respectively, amending paragraph (b)(3) by revising ''(a)(3)'' to read ''(a)(4)'' and ''(a)(4)(ii)'' to read ''(a)(5)(ii)'', amending newly designated paragraphs (b)(6) by revising ''(b)(4)'' to read ''(b)(5)'', amending newly designated paragraph (b)(7) by revising ''(b)(5)'' to read ''(b)(6)'', and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1005.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1005.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1005.80;

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1005.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1005.80;

* * * * *

3. Following § 1005.78, a new undesignated center heading and §§ 1005.80, 1005.81, and 1005.82 are added to read as follows:

Marketwide Service Payments

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1005.81 and out of which shall be made the payments due handlers pursuant to § 1005.82. Payments due a handler shall be offset against payments due from the handler.

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1005.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1005.61 (a)(4) or (b)(5).

(c) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than [the publication date of the final rule in the Federal Register] and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1005.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30 (a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, and allocated to Class I milk pursuant to § 1005.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1005.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1007, 1011, or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1005.53;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Multiply the number computed in paragraph (d)(2)(iii) of this section by the hundredweight of milk described in paragraph (c)(2) of this section;

(v) Subtract this order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section from the Class I price applicable at the distributing plant receiving the milk; and

(vi) Subtract any positive difference computed in paragraph (d)(2)(v) of this section from the amount computed in paragraph (d)(2)(iv) of this section.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

4. The authority citation for part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674.

4a. In § 1007.30, paragraphs (a) and (c) are revised to read as follows:

§ 1007.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046, for which a transportation credit is requested pursuant to § 1007.82;

(6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to § 1007.82(c)(2);

(7) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(8) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph (a).

* * * * *

(c) Each handler described in § 1007.9 (b) and (c) shall report:

(1) The quantities of skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a) (5) and (6) of this section.

* * * * *

5. Section 1007.61 is amended by redesignating paragraphs (a)(4), (a)(5), (b)(5), and (b)(6) as paragraphs (a)(5), (a)(6), (b)(6), and respectively, (b)(7), amending (b)(3) by revising ''(a)(3)'' to read ''(a)(4)'' and ''(a)(4)(ii)'' to read ''(a)(5)(ii)'', amending newly designated paragraph (b)(6) by revising ''(b)(4)'' to read ''(b)(5)'', amending newly designated paragraph (b)(7) by revising ''(b)(5)'' to read ''(b)(6)'', and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1007.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1007.80;

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1007.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1007.80;

* * * * *

6. Following § 1007.78, a new undesignated center heading and §§ 1007.80, 1007.81, and 1007.82 are added to read as follows:

Marketwide Service Payments

§ 1007.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1007.81 and out of which shall be made the payments due handlers pursuant to § 1007.82. Payments due a handler shall be offset against payments due from the handler.

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1007.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1007.61 (a)(4) or (b)(5).

(c) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than [the publication date of the final rule in the Federal Register] and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1007.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the *transportation credit period*) to any

of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046 allocated to Class I milk pursuant to § 1007.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1007.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1011 or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1007.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Multiply the number computed in paragraph (d)(2)(iii) of this section by the hundredweight of milk described in paragraph (c)(2) of this section;

(v) Subtract the order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section from the Class I price applicable at the distributing plant receiving the milk; and

(vi) Subtract any positive difference computed in paragraph (d)(2)(v) of this section from the amount computed in paragraph (d)(2)(iv) of this section.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

7. In § 1011.30, paragraphs (a) and (c) are revised to read as follows:

§ 1011.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1011.9(c);

(3) Receipts of milk from handlers described in 1011.9(d);

(4) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(5) Receipts of other source milk;

(6) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1046, for which a transportation credit is requested pursuant to § 1011.82;

(7) Receipts of producer milk described in § 1011.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to § 1011.82(c)(2);

(8) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1011.40(b)(1); and

(9) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph (a).

* * * * *

(c) Each handler described in § 1011.9(b), (c) and (d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1011.82, all of the information required in paragraphs (a) (6) and (7) of this section.

* * * * *

8. Section 1011.61 is amended by redesignating paragraphs (a)(4), (a)(5), (b)(5), and (b)(6) as paragraphs (a)(5), (a)(6), paragraph (b)(6) and (b)(7), respectively amending paragraph (b)(3) by revising ''(a)(3)'' to read ''(a)(4)'' and ''(a)(4)(ii)'' to read ''(a)(5)(ii)'', amending newly designated paragraph (b)(6) by revising''(b)(4)'' to read ''(b)(5)'', amending newly designated paragraph (b)(7) by revising ''(b)(5)'' to read ''(b)(6)'', and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1011.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1011.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1011.80;

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1011.82 exceeds the available balance

in the transportation credit balancing fund pursuant to § 1011.80;

* * * * *

9. Following § 1011.78, a new undesignated center heading and §§ 1011.80, 1011.81, and 1011.82 are added to read as follows:

Marketwide Service Payments

§ 1011.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1011.81 and out of which shall be made the payments due handlers pursuant to § 1011.82. Payments due a handler shall be offset against payments due from the handler.

§ 1011.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1011.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1011.61 (a)(4) or (b)(5).

(c) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than [the publication date of the final rule in the Federal Register] and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1011.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1011.30(a)(6), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1011.30(a)(7), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1011.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1046, and allocated to Class I milk pursuant to § 1011.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1011.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1011.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Multiply the number computed in paragraph (d)(2)(iii) of this section by

the hundredweight of milk described in paragraph (c)(2) of this section;

(v) Subtract this order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section from the Class I price applicable at the distributing plant receiving the milk; and

(vi) Subtract any positive difference computed in paragraph (d)(2)(v) of this section from the amount computed in paragraph (d)(2)(iv) of this section.

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

10. The authority citation for part 1046 continues to read as follows:

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

10 a. In § 1046.30, paragraphs (a) and (c) are revised to read as follows:

§ 1046.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1046.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, for which a transportation credit is requested pursuant to § 1046.82;

(6) Receipts of producer milk described in § 1046.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to § 1046.82(c)(2);

(7) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1046.40(b)(1); and

(8) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph (a).

* * * * *

(c) Each handler described in § 1046.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1046.82, all of the information required in paragraphs (a) (5) and (6) of this section.

* * * * *

11. Section 1046.61 is amended by redesignating paragraphs (a)(4), (a)(5), (b)(5), and (b)(6) as paragraphs (a)(5), (a)(6), (b)(6), and (b)(7), respectively, amending paragraph (b)(3) by revising ''(a)(3)'' to read ''(a)(4)'' and ''(a)(4)(ii)'' to read ''(a)(5)(ii)'', amending newly designated paragraph (b)(6) by revising ''(b)(4)'' to read ''(b)(5)'', amending newly designated paragraph (b)(7) by revising ''(b)(5)'' to read ''(b)(6)'', and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1046.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1046.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1046.80;

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1046.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1046.80;

* * * * *

12. In § 1046.73, paragraph (f)(2) is revised to read as follows:

§ 1046.73 Payments to producers and to cooperative associations.

* * * * *

(f) * * *

(2) On or before the 10th day after the end of the following month for milk received during the month an amount computed at not less than the value of such milk at the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1046.74 applicable at the location of the receiving handler's pool plant and any transportation credit that is due the cooperative association pursuant to § 1046.82(a), less the payment made pursuant to paragraph (f)(1) of this section.

13. Following § 1046.78, a new undesignated center heading and §§ 1046.80, 1046.81, and 1046.82 are added to read as follows:

Marketwide Service Payments

§ 1046.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1046.81 and out of which shall be made the payments due handlers pursuant to § 1046.82. Payments due a handler shall be offset against payments due from the handler.

§ 1046.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1046.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1046.61 (a)(4) or (b)(5).

(c) The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than [the publication date of the final rule in the Federal Register] and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1046.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1046.30(a)(5), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1046.30(a)(6), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to

paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1046.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be paid to such cooperative association by the pool plant operator pursuant to § 1046.73(f)(2).

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, and allocated to Class I milk pursuant to § 1046.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1046.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1011, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1046.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Multiply the number computed in paragraph (d)(2)(iii) of this section by the hundredweight of milk described in paragraph (c)(2) of this section;

(v) Subtract this order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section from the Class I price applicable at the distributing plant receiving the milk; and

(vi) Subtract any positive difference computed in paragraph (d)(2)(v) of this section from the amount computed in paragraph (d)(2)(iv) of this section.

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Part IV

Department of Transportation

Coast Guard

33 CFR Parts 120 and 128

Security for Passenger Vessels and Passenger Terminals; Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 120 and 128

[CGD 91–012]

RIN 2115–AD75

Security for Passenger Vessels and Passenger Terminals

AGENCY: Coast Guard, DOT.

ACTION: Interim Rule with request for comments.

SUMMARY: The Coast Guard is implementing an interim rule for the security of passenger vessels and passenger terminals. This rule is intended to deter, or mitigate the results of, terrorism and other unlawful acts against passenger vessels and passenger terminals. It should reduce the likelihood of such acts and should reduce the damage to property and injury to persons, if such acts occur.

DATES: This rule is effective on October 16, 1996. Comments must be received on or before September 16, 1996. The Director of the Federal Register approves as of October 16, 1996 the incorporation by reference of certain publications listed in the rule.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406) (CGD 91–012), 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 9:30 a.m. and 2 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.

A copy of the material listed in ''Incorporation by Reference'' of this preamble is available for inspection at room 1312, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: CDR Dennis J. Haise, Office of Marine Safety, Security, and Environmental Protection (G–MOS–2), Room 1208, (202) 267–6451, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

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 name and address, identify this rulemaking (CGD 91–012) 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 acknowledgment 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 rule in view of the comments.

The Coast Guard held 3 public meetings after a notice of proposed rulemaking (NPRM) entitled ''Security for Passenger Vessels and Passenger Terminals'' was published (See 59 FR 14290; March 25, 1994) and plans no further 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.

Regulatory Information

On March 25, 1994, the Coast Guard published (59 FR 14290) a notice of proposed rulemaking (NPRM) entitled ''Security for Passenger Vessels and Passenger Terminals''.

Background and Purpose

The vulnerability to terrorism of passenger vessels and associated passenger terminals has been a major national and international concern since the death of a U.S. citizen during the hijacking of the ACHILLE LAURO in 1985. To address this threat, the President signed into law the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399; 100 Stat. 889), Title IX of which constitutes the International Maritime and Port Security Act. That Act amended the Ports and Waterways Safety Act (33 U.S.C. 1221), and provided the Coast Guard authority to ''carry out or require measures, including inspections, port and harbor patrols, the establishment of security and safety zones, and the development of contingency plans and procedures, to prevent or respond to acts of terrorism'' (§ 906).

The International Maritime Organization (IMO) adopted and published ''Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships'', also in 1986. Those measures, which are guidelines, apply to passenger ships engaged on international voyages of 24 hours or more and to the port facilities that serve them. The Coast Guard published a notice in the Federal Register listing these measures as ''guidelines'' and encouraging voluntary compliance (52 FR 11587; April 9, 1987).

Since that time, the Coast Guard has relied upon voluntary compliance with the IMO measures, and with its own guidelines based on the IMO measures, to ensure that passenger vessels and passenger terminals were prepared to prevent, and respond to, acts of terrorism. Coast Guard encouragement to implement these measures has brought about varying degrees of acceptance. Initially, the response was promising as many passenger vessels and associated passenger terminals operating in the U.S. began implementing them. However, the degree of implementation has been inconsistent. Progress toward total implementation has slowed significantly over the last 3 years. Some passenger vessels and passenger terminals still do not maintain and administer appropriate security measures. The Coast Guard has determined that voluntary compliance has not produced the industry-wide level of security necessary to ensure that acts of terrorism are deterred, or responded to, in the best possible manner.

Terrorism has not decreased. In fact, the Coast Guard has seen an increase in domestic terrorism along with a consistent, if not increasing, threat of international terrorism. For these reasons, the Secretary of the Department of Transportation (DOT) has asked all agencies of the Department to reassess their security procedures and standards. Consequently, the Coast Guard determined that implementing a rule to ensure that passenger vessels and passenger terminals are prepared to handle terrorist threats or actions was necessary.

The decision to move from an NPRM to this interim rule is based on the fact that domestic terrorism, as well as international terrorism, seems to be increasing. Passenger vessels and passenger terminals are vulnerable and,

therefore, must begin developing plans to reduce the risk of terrorism against them.

Discussion of Comments and Changes

The Coast Guard received 115 letters of comment and held 3 public meetings. Thirty-three comments, and several speakers at the public hearings, expressed their concern that the NPRM was too stringent and inflexible. Many also felt that the proposed requirements were over and above those recommended in the IMO measures that the Coast Guard had encouraged the industry to adopt. As a result of the many comments received, the Coast Guard has reconsidered its position on the scope of the rule and has decided to align the rule as closely as possible with the IMO measures by incorporating the requirements of Circular 443 of the IMO's Maritime Safety Committee (MSC) into the rule (See §§ 120.220 and 120.230; 128.220 and 128.230). The Coast Guard has determined that Circular 443 contains the basic elements necessary to develop a sound security program, and will give industry the flexibility that so many felt were missing from the NPRM.

Another issue consistently raised by the comments was the perception that the current threat does not merit the degree of security specified in the NPRM. The Coast Guard agrees with this general observation; however, it believes that the need for increased security continues. Although the threat level today may be low, the possibility remains that it may escalate at any time. National-security assessments over the past several years attest that terrorism continues throughout the world. The United States is not exempt from terrorism as evidenced by the bombing in 1995 at Oklahoma City. There is little question that the threat of terrorism from both domestic and international terrorists is, in fact, real.

Vulnerability has also been an important consideration in determining the need for this rule. In general, the cruise industry lacks identifiable security standards. Further, this industry is such that its operations are generally vulnerable to terrorist activities. The intent of this rule is to require passenger vessels and passenger terminals to evaluate their vulnerability, develop methods to reduce it, and establish plans to respond to increased threat. The promulgation of security standards will increase security, and should reduce vulnerability and the risk of a terrorist incident.

The Coast Guard understands, however, that the need for maximum security does not exist at all times and has amended the rule to define levels of threat for which security plans must be developed. It has added three definitions to § 120.110, for *low, medium,* and *high threats.* A *low threat* is one when the possibility of an unlawful act against a vessel or terminal exists, and indications are that a general worldwide threat of terrorism exists. This is the threat level for which security measures must be maintained for an indefinite period of time; in other words, these are the normal, everyday security measures. A *medium threat* is one where the threat of an unlawful act against a vessel or terminal is possible, and where intelligence indicates that terrorist activities are likely within a specific area, against a class of vessel, or against a type of terminal. This threat level indicates that a particular segment of the industry is in jeopardy but that no specific target has been identified. A *high threat* is one where intelligence indicates that terrorist activities have targeted a specific vessel or terminal and that the threat of an unlawful act against a vessel or terminal is probable if not imminent. The Coast Guard envisions that *medium* and *high threats* would not last long and would focus on only a small portion of the industry at any one time.

Distribution and notification of threat levels will be the responsibility of the Coast Guard. The Commandant (G–MRO) will be responsible for ensuring that Captains of the Port (COTPs) advise passenger vessels and passenger terminals within their areas of responsibility of a higher or lower threat level. The vessel or terminal can and should increase its security whenever suspect activities are noted by their own personnel or other reliable sources such as the Federal Bureau of Investigations (FBI) or local law-enforcement authorities. Increases in threat level initiated by the vessel, terminal, or other sources shall be reported by the affected vessel or terminal to the local COTP as soon as practicable. With these amendments, the Coast Guard believes, the rule will allow owners and operators to continue to operate as they normally do; however, they will now have plans in place to increase security when advised by the Coast Guard or other competent authority.

Thirteen comments expressed concerns for the amount of equipment that would have to be purchased to comply with the proposed rule. With the incorporation of the MSC Circular 443 requirements into the rule, equipment is no longer specified or required. Owners or operators must use the annexes within the Circular to determine how best to protect their passengers.

Eighteen comments addressed what was felt as the Coast Guard's lack of consideration for smaller ports, or those ports at which passengers disembark for only short periods of time. The Coast Guard disagrees. If a port does not embark or disembark a large number of people with a substantial amount of baggage, then the degree of security decreases. In some instances, the only security necessary may be the screening of carry-on items; this may best be handled by the vessel. The rule specifically states that the operator of the terminal need not duplicate any provisions fulfilled by the operator of the vessel, or vice versa, unless directed by the Commandant. Each terminal will have to develop a plan addressing normal operations as well as operations during higher threats. This plan will be based on the amount and type of activity occurring within that port. It will be examined by the cognizant COTP, who has a working relationship with the port. The COTP's evaluation of the plan will depend upon the location of the port and upon the ability of the owner or operator of the vessel or terminal to meet the measures required for all three threat levels.

Nine comments expressed concern that the rule would be pointless unless enforced equally worldwide. The Coast Guard does not have the authority to issue worldwide regulations and must work through IMO to help set international standards. The IMO measures for preventing acts against passenger vessels and passenger terminals were published to provide an international security standard. However, they are not mandatory, and, for that reason, the Coast Guard conducts periodic security assessments of foreign ports to determine compliance with them. The Coast Guard has the responsibility to request that the Department of Transportation ask the Department of State to issue an advisory warning against travel to a particular port if it determines that adequate security is not being provided.

Nine comments addressed the release of security plans on requests under the Freedom of Information Act (FOIA) (5 U.S.C. 552). All of the comments expressed the feeling that releasing these documents would seriously jeopardize the overall security of the vessel or terminal. The Coast Guard fully agrees with this feeling and has submitted a legislative proposal to specifically exempt these plans from requests under FOIA.

The State of Alaska asked that its ferries be exempt from this rule. Its basis

for this request is that these ferries make up part of the Alaska Marine Highway System, and are a vital link between Alaska and the lower 48 States. It advises that people often use the system out of necessity, not choice, and that voyages transit the high seas for only very short periods of time between the U.S. and Canada. The intent of the Coast Guard has never been to apply this rule to this type of vessel. For that reason, §§ 120.100 and 128.100 of the rule have been changed to exempt all ferries and terminals when servicing ferries.

Five comments stated that the applicability of proposed §§ 120.100 and 128.100 was not clear and that confusion exists whether a covered vessel must be on the high seas for 24 hours during a voyage or whether the entire voyage must be 24 hours with part of that voyage being on the high seas. The sections apply to those vessels making voyages of more than 24 hours, any part of which is on the high seas; they do not dictate that the vessel needs to be on the high seas for 24 hours. They have been changed to more clearly define the applicability of the rule relative to voyages on the high seas.

Nine comments addressed the definition of *operator* in proposed § 120.110. Some comments stated that the definition was overly broad and that they were concerned that it could be construed to include port authorities and general terminal operators. The salient phrase in the definition was—and still is—''maintains operational control over a passenger vessel or passenger terminal.'' Providing pier space does not, in and of itself, constitute operational control. The contract negotiated between the terminal and the vessel is a key indicator of operational control. For a terminal, the definition of *operator* must be coupled with the definition of *passenger terminal*, which emphasizes the use of the terminal for the assembling, processing, embarking, or disembarking of passengers or baggage. The Coast Guard considers the definition of *operator*, as written, clear and not in need of change.

Eight comments addressed restricted areas described in proposed § 120.210. The comments urged that too many locations were specified and that extensive installation of equipment would be necessary to comply with the rule. The incorporation of MSC Circular 443 eliminated this concern and allows owners or operators to use the guidance in the annexes of the Circular to determine which areas they intend to designate as ''restricted.''

Five comments addressed the responsibilities of the security officer in proposed §§ 120.220(b) and 128.220(b), and the requirement for that officer to do all the items mentioned. The Coast Guard did not intend for that officer to personally do all items specified: it is perfectly acceptable to use the services of other security professionals to accomplish these tasks. However, that officer should have a working knowledge of security procedures to ensure that the jobs are properly accomplished. To more clearly express this point, the rule has been reorganized and these requirements have been moved to §§ 120.120 and 128.120.

Six comments addressed proposed §§ 120.240 and 128.240, coordination with terminal and vessel security, respectively. The major concern was that the Coast Guard did not designate specific responsibilities for the vessel and the terminal. The intent of these sections was to develop a relationship between the owner or operator of the vessel and the owner or operator of the terminal by requiring consultations about security between them. Of course each vessel and each terminal will have differences in capabilities. Coordination between the two will take these into consideration. Further, the cost of security may be reduced as duplication of effort will be avoided. Cooperation and coordination between the vessel and the terminal should prove beneficial to each. The Coast Guard has removed the specific sections imposing the requirement of coordination between the vessel and the terminal; however, the requirement still exists within §§ 120.200(b) and 128.200(b) of the interim rule.

Four comments addressed plans and their distribution in proposed §§ 120.300 and 128.300. These comments urged that the plans be available only to those with the operational need to know. The Coast Guard agrees, and has amended these sections.

Six comments addressed the survey contents required by proposed §§ 120.310 and 128.310. The comments focused on the amount of information required and the potential size of the document. Annex 1 of MSC Circular 443, which now contains the guidance for security surveys, is not as stringent or specific as the guidance anticipated by the NPRM. These surveys are the most critical part of plan development. Each owner or operator should make them as thorough as possible.

Seven comments addressed the requirements for identification in proposed §§ 120.350 and 128.350. These requirements, too, have been removed by the incorporation of MSC Circular 443; Annex 2 to the Circular must now be used for guidance concerning identification.

Sixteen comments addressed the screening of baggage, stores, and cargo under proposed §§ 120.360 and 128.360. They dealt primarily with the amount of time it will take to screen all the baggage, stores, and cargo. The comments stated that all the screening would cause undue delays in boardings and departures of vessels. Some suggested that the process itself was a waste of time. Others supported it, and offered alternatives to help speed it. These sections, too, have been removed from this interim rule. This now directs owners and operators to use the guidance in Annex 2 of MSC Circular 443. The amount of screening to be done should be determined with reference to the three threat levels defined by this rule.

Nine comments addressed the lighting requirements in proposed § 120.410. They concerned primarily the impracticability of the lighting distance specified. This section has been removed. For guidance on security lighting, owners and operators must now turn to Annex 2 of MSC Circular 443.

Twenty comments addressed the requirement for barriers in proposed § 128.435. Most expressed the concern that fences with barbed wire were not aesthetically pleasing, were impracticable in some areas, and would detract from the cruising experience. This section has been removed. For guidance on barriers, owners and operators must now turn to Annex 2 of MSC Circular 443. Permanent barriers are no longer required; however, barriers must still achieve the purpose proclaimed in the Circular.

Beyond those changes made in response to comments on the NPRM, the Coast Guard also has made the following changes on its own initiative.

Proposed §§ 120.200 and 128.200 have been amended to more clearly define requirements for planning based on threat. In particular, §§ 120.200 and 128.200 as published today introduce planning based on three levels of threat.

Proposed §§ 120.300 and 128.300 have been amended to require planning for low, medium, and high threats and to restrict distribution of the plan to only those persons with the operational need to know. The latter change will help reduce the risk of the plan's falling into the hands of a terrorist.

Proposed §§ 120.305 and 128.305 have been retitled and reworded, removing the requirement of a letter of adequacy of inserting procedures by which the Coast Guard will examine plans for compliance with this rule.

These changes will reduce the amount of time necessary to review plans for compliance with this rule and will reduce the amount of paperwork generated by and for the Coast Guard. Sections 120.300(a) and 128.300(a) require that an ''appropriate'' plan be developed and maintained. In this context, the examining authority, either the NMC or the COTP, will be reviewing plans to insure that security measures are commensurate with each threat level. The examining authorities will evaluate the circumstances unique to the vessel or terminal, and determine whether adequate security measures for the three threat levels are addressed. Factors to be considered will include such things as security guards, screening of baggage and stores, barriers, and personnel access control.

Proposed § 120.307 has been amended by removing the requirement for Commandant's approval of amendments to plans and by inserting procedures under which the Coast Guard will examine the amendments for compliance with this rule. Again, time for review and paperwork will be reduced because of this amendment.

Proposed § 128.307 has been amended by removing the requirement for COTPs' approval of amendments to plans and by inserting procedures under which the Coast Guard will examine the amendments to ensure compliance with this rule. This amendment will speed review of documents by the Coast Guard and will eliminate paperwork.

Proposed §§ 120.220 and 128.220 have been redesignated as §§ 120.210 and 128.210, respectively.

Proposed § 120.250 has been redesignated as § 120.220.

Proposed § 128.250 has been redesignated as § 128.220.

Proposed §§ 128.210; 120.240 and 128.240; 120.370 and 128.370; 120.420 and 128.420; 120.430 and 128.430; and 120.440 and 128.440 have given way to the guidance contained in the annexes to MSC Circular 443.

Sections 120.309 and 128.309 have been added to provide the right to appeal the action or decision of the NMC or the COTP.

Incorporation by Reference

The following material would be incorporated by reference in §§ 120.220, 120.300, 128.220 and 128.300: International Maritime Organization (IMO), MSC Circular 443, ''Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships'' dated September 26, 1986. Copies of the material are available for inspection where indicated under **ADDRESSES**. Copies of the material are available from the source listed in §§ 120.120 and 128.120.

The Coast Guard has submitted this material to the Director of the Federal Register for approval of the incorporation by reference.

Assessment

This proposal is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that Order. It requires an assessment of potential cost and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). An Assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Assessment follows.

The Coast Guard anticipates that approximately 120 passenger vessels and 53 passenger terminals would be affected. Of the vessels, approximately 117 are cruise vessels, each carrying in excess of 100 passengers and operating out of U.S. ports. Of the terminals, all serve these cruise vessels. There may be up to 40 more vessels and 20 more terminals that would be subject to this rule only on occasion. There are approximately 4 million passengers a year that would be subject to, and benefit from, the proposed security measures.

The Coast Guard estimates initial implementing costs at $546,368. It estimates annual operating costs at $28,000. If the number of passengers remains constant at approximately 4 million per year, the additional cost to consumers will be negligible.

The potential exists for the loss of many lives and significant property damage from a single act of terrorism against a passenger vessel. The principal benefit gained by this action will be a higher level of preparedness and the ability to better respond to such an act. Additionally, these measures will act as a deterrent to terrorist actions. Although it is difficult to calculate the number of deaths and injuries, and dollar value of property damage, lawsuits, and lost business that this action will prevent, the Coast Guard asserts that the benefits will far outweigh the costs of this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under § 3 of the Small Business Act (15 U.S.C. 632).

This rule will have a minimal impact on small entities, but most passenger vessels making voyages on the high seas of 24 hours or more, and most terminals associated with them, are neither owned nor operated by small entities. Security requirements for small vessels and terminals will be less complex and less expensive to implement than for large vessels and terminals. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this rule will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this rule will economically affect your business.

Paperwork Reduction Act of 1995

This interim rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collections are shown below and an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Secretary for Passenger Vessels and Passenger Terminals.

Description: This interim rule implements security standards for passenger vessels and terminals. It requires a comprehensive security program that includes requirements for a security plan and the reporting of unlawful acts or related activities. These requirements are contained in §§ 120.220, 120.300, 120.307, 128,220, 128.300, and 128.307.

Need for Information: Protect the public from injury, prevent damage to property, and avoid economic losses.

Proposed use of Information: Regulatory compliance, program management, and program evaluation.

Description of Respondents: The owner of any covered vessel or terminal. These include: businesses or other for profit organizations, Federal, State and Local governments.

Frequency of Response: Once for each covered vessel and terminal; then, on occasion of amendment to plan. Reporting of unlawful acts or related activities is also required when they occur.

Estimated Annual Burden: 1,649 hours. This figure is the total annual burden hours for the estimated 120 covered vessels and the 53 covered terminals. It includes the hours necessary for initial plan development and annual maintenance, and the time necessary to develop reports of unlawful acts, and is amortized over a 25-year period.

As required be section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this interim rule to OMB for its review of these information collection requirements.

In addition, the Coast Guard solicits public comment on the information collection requirements in order to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed information, including the validity of the methodology and assumptions used, (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Individuals and organizations may submit comments on the information collection requirements by September 16, 1996, and should direct them to the Executive Secretary, Marine Safety Council (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm 10235, 725 17th St. NW., Washington, DC 20503, Attention: Desk Officer for DOT.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB Control number. The Coast Guard will publish a notice in the Federal Register prior to the effective date of this interim rule of OMB's decisions to approve, modify or disapprove the information collection requirements.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under paragraph 2.B.2.e.(34) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rulemaking implements statutory authority of the Coast Guard in maritime safety. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 120

Security, Passenger vessels, Incorporation by reference, Reporting and recordkeeping requirements.

33 CFR Part 128

Security, Waterfront facilities, Incorporation by reference, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend Chapter I of title 33, Code of Federal Regulations, as follows:

1. Subchapter K, consisting of part 120, is added to read as follows:

SUBCHAPTER K—SECURITY OF VESSELS

PART 120—SECURITY OF PASSENGER VESSELS

Subpart A—General

Sec.

Subpart B—Security Program

Subpart C—Plans and Procedures for Vessel Security.

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

Subpart A—General

§ 120.100 Applicability.

This part applies to all passenger vessels over 100 gross tons, carrying more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the United States or its territories. It does not apply to ferries that hold Coast Guard Certificates of Inspection endorsed for ''Lakes, Bays, and Sounds'', and that transit international waters for only short periods of time, on frequent schedules.

§ 120.110 Definitions.

As used in this part:

Captain of the Port (COTP) means the Coast Guard officer designated by the Commandant to command a Captain of the Port Zone as described in Part 3 of this chapter, or an authorized representative.

Commandant means the Commandant of the U.S. Coast Guard, or an authorized representative.

High seas means all waters that are neither territorial seas nor internal waters of the United States or of any foreign country as defined in Part 2, Subpart 2.05, of this chapter.

High threat means that the threat of an unlawful act against a vessel or terminal is probable or imminent and that intelligence indicates that terrorists have chosen specific targets.

Low threat means that the threat of an unlawful act against a vessel or terminal is, though possible, not likely.

Medium threat means that the threat of an unlawful act against a vessel or terminal is possible and that intelligence indicates that terrorists are likely to be active within a specific area, or against a type of vessel or terminal.

Operator means the person, company, or governmental agency, or the representative of a company or governmental agency, that maintains operational control over a passenger vessel or passenger terminal.

Passenger terminal means any structure used for the assembling, processing, embarking, or disembarking of passengers or baggage for vessels subject to this part. It includes piers, wharves, and similar structures to which a vessel may be secured; land and water under or in immediate proximity to these structures; buildings on or contiguous to these structures; and equipment and materials on or in these structures.

Unlawful act means an act that is a felony under U.S. federal law, under the laws of the States where the vessel is located, or under the laws of the country in which the vessel is registered.

Voyage means the passenger vessel's entire course of travel, from the first port at which the vessel embarks

passengers until its return to that port or another port where the majority of the passengers are disembarked and terminate their voyage.

§ 120.120 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and must make the material available to the public. All approved material may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC, and at the U.S. Coast Guard, (G–MES), 2100 Second Street SW., Washington, DC. Copies may be obtained from IMO, 4 Albert Embankment, London SE1 7SR.

(b) The materials approved for incorporation by reference in this part and the sections affected are:

International Maritime Organization (IMO)

4 Albert Embankment, London SE1 7SR
MSC Circular 443, Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships September 26, 1986—120.220, 120.300

Subpart B—Security Program

§ 120.200 General.

(a) Each operator of a vessel to which this part applies shall for each such of its vessels implement a program that—

(1) Provides for the safety and security of persons and property traveling aboard the vessel against unlawful acts;

(2) Prevents or deters the carriage aboard the vessel of any prohibited weapon, incendiary, or explosive, on or about any person or within his or her personal articles or baggage, and the carriage of any prohibited weapon, incendiary, or explosive, in stowed baggage, cargo, or stores;

(3) Prevents or deters unauthorized access to the vessel and to restricted areas aboard the vessel;

(4) Provides means to meet the requirements for low, medium, and high threats, through increased security measures to be implemented on advice by the Commandant or COTP of an increased threat to the vessel or persons on the vessel;

(5) Designates, by name, a security officer for the vessel;

(6) Ensures that all members of the crew are adequately trained to perform their duties relative to security; and

(7) Provides for coordination with terminal security while in port.

(b) Each operator of a vessel to which this part applies shall work with the operator of each terminal at which the vessel embarks or disembarks passengers, to provide security for the passengers and the vessel. The vessel, however, need not duplicate any provisions fulfilled by the terminal unless directed by the Commandant. When a provision is fulfilled by the terminal, that fact shall be referenced in the applicable section of the Vessel Security Plan required by § 120.300.

§ 120.210 Vessel security officer.

(a) Each operator of a vessel to which this part applies shall designate a security officer for the vessel.

(b) This officer shall ensure that—

(1) An initial comprehensive security survey is conducted and updated;

(2) The plan required by § 120.300 is implemented and maintained, and that amendments to correct its deficiencies and satisfy the security requirements for the vessel are proposed;

(3) Adequate training for members of the crew responsible for security is provided;

(4) Regular security inspections of the vessel are conducted;

(5) Vigilance, as well as general awareness of security aboard the vessel, is encouraged;

(6) All occurrences or suspected occurrences of unlawful acts and related activities are reported in accordance with § 120.220; and

(7) Coordination, for implementation of the plant required by § 120.300, takes place with the terminal security officer at each terminal at which the vessel embarks or disembarks passengers.

§ 120.220 Reporting of unlawful acts and related activities.

(a) Either the operator of the vessel or the vessel security officer shall report each breach of security, unlawful act, or threat of an unlawful act against the vessel or persons aboard it that occurs in a place subject to the jurisdiction of the United States, both to the COTP and to the local office of the Federal Bureau of Investigation (FBI). Also, the operator of each U.S.-flag vessel shall report each such incident that occurs in a place outside the jurisdiction of the United States to the hotline of the Response Center of the Department of Transportation at 1–800–424–0201, or, from within metropolitan Washington D.C., at (202) 267–3675.

(b) Either the operator of the vessel or the vessel security officer shall file a written report of the incident, using the form ''Report on an Unlawful Act'', contained in IMO MSC Circular 443, which the operator or the officer shall forward as soon as possible to Commandant (G–MRO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Notification of an incident may be initially filed by fax. Original copies should be sent by mail in conjunction with faxing the report to the Commandant (G–MRO), fax numbers are (202) 267–4085/4065.

Subpart C—Plans and Procedures for Vessel Security

§ 120.300 Plan: General.

(a) Each operator of a vessel subject to this part shall for each such vessel develop and maintain, in writing, an appropriate Vessel Security Plan that—

(1) Is unique to the vessel;

(2) Articulates the program required by § 120.200; and

(3) Includes an appendix, for each port in which the vessel embarks or disembarks passengers, that contains port-specific security information.

(b) The Plan must be developed and maintained in accordance with the guidance in IMO MSC Circular 443, and must address security for periods of low, medium, and high threats, to—

(1) Deter unauthorized access to the vessel and its restricted areas;

(2) Deter the introduction of prohibited weapons, incendiaries, or explosives aboard the vessel;

(3) Encourage vigilance, as well as general awareness of security, aboard the vessel;

(4) Provide adequate training to members of the crew for security aboard the vessel;

(5) Coordinate responsibilities for security with the operator of each terminal at which the vessel embarks or disembarks passengers; and

(6) Provide information to members of the crew and to law-enforcement personnel, in case of an incident affecting security.

(c) The operator shall amend the Plan to address any known deficiencies.

(d) The operator shall restrict the distribution, disclosure, and availability of information contained in the plan to those persons with an operational need to know.

§ 120.305 Plan: Procedure for examination.

(a) Each operator of a passenger vessel subject to this part shall submit two copies of the Vessel Security Plan required by § 120.300 to the Director, National Maritime Center (NMC), 4200 Wilson Blvd., Suite 510, Arlington, VA 22203, for examination before October 16, 1996, or at least 60 days before

embarking passengers on a voyage described in § 120.100, whichever is later.

(b) If the Director of the NMC finds that the Vessel Security Plan meets the requirements of § 120.300, the Director shall return a copy to the owner or operator marked ''Examined by the Coast Guard''.

(c) If the Director of the NMC finds that the Plan does not meet the requirements of § 120.300, the Director shall return the plan with an explanation of why it does not meet the requirements.

(d) No vessel subject to this part may embark or disembark passengers in the United States after November 16, 1996, unless it holds either a Vessel Security Plan that has been examined by the Coast Guard or a letter from the Director of the NMC stating that the Plan is currently under review by the Coast Guard and that normal operations may continue until the Coast Guard has determined whether the Plan meets the requirements of § 120.300.

§ 120.307 Plan: Amendment.

(a) The operator of a passenger vessel subject to this part may initiate amendments to the Vessel Security Plan on its own as well as when directed by the Director of the NMC.

(b) Each proposed amendment to the Plan, initiated by the operator, including changes to the appendices required by § 120.300(a)(3), must be submitted to the Director of the NMC for review at least 30 days before the proposed amendment is to take effect, unless a shorter period is allowed by the Director. The Director will examine the amendment and respond according to § 120.305.

(c) The Director of the NMC may direct the operator of a vessel subject to this part to amend its Plan if the Director determines that implementation of the Plan is not providing effective security. Except in an emergency, the Director will issue to the operator a written notice of matters to address and will allow the operator at least 60 days to submit proposed amendments.

(d) If there is an emergency or other circumstance that makes the procedures in paragraph (c) of this section impracticable, the COTP may give to the operator of a vessel subject to this part an order to implement increased security measures immediately. The order will incorporate a statement of the reasons for it.

§ 120.309 Right of appeal.

Any person directly affected by a decision or action taken by the Director of the NMC under this part, may appeal that action or decision to the Chief, Marine Safety and Environmental Protection Directorate (Commandant (G–M)) according to the procedures in 46 CFR 1.03–15.

2. Part 128 is added to subchapter L to read as follows:

PART 128—SECURITY OF PASSENGER TERMINALS

Subpart A—General

Subpart B—Security Program

Subpart C—Plans and Procedures for Terminal Security

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

Subpart A—General

§ 128.100 Applicability.

This part applies to all passenger terminals in the United States or its territories when being used for the assembling, processing, embarking, or disembarking of passengers or baggage for passenger vessels over 100 gross tons, carrying more than 12 passengers for hire; making a voyage lasting more than 24 hours, any part of which is on the high seas. It does not apply to terminals when serving ferries that hold Coast Guard Certificates of Inspection endorsed for ''Lakes, Bays, and Sounds'', and that transit international waters for only short periods of time, on frequent schedules.

§ 128.110 Definitions.

The definitions in part 120 of this chapter apply to this part.

§ 128.120 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and must make the material available to the public. All approved material may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC, and at the U.S. Coast Guard, (G–MES), 2100 Second Street SW., Washington, DC. Copies may be obtain from IMO, 4 Albert Embankment, London SE1 7 SR.

(b) The materials approved for incorporation by reference in this part and the sections affected are:

International Maritime Organization (IMO)

4 Albert Embankment, London SE1 7SR

MSC Circular 443, Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships September 26, 1986—128.220, 128.300

Subpart B—Security Program

§ 128.200 General.

(a) Each operator of a passenger terminal to which this part applies shall implement for each such terminal of which it is the operator a security program that—

(1) Provides for the safety and security of persons and property in the terminal and aboard each passenger vessel subject to Part 120 of this chapter moored at the terminal, against unlawful acts;

(2) Prevents or deters the carriage aboard any such vessel moored at the terminal of any prohibited weapon, incendiary, or explosive on or about any person or within his or her personal articles or baggage, and the carriage of any prohibited weapon, incendiary, or explosive in stowed baggage, or cargo, or stores;

(3) Prevents or deters unauthorized access to any such vessel and to restricted areas in the terminal;

(4) provides means to meet the requirements for low, medium, and high threats, through increased security measures to be implemented on advice by the Commandant or Captain of the Port (COTP) of an increased threat to the terminal, the vessel, or persons on the terminal or vessel;

(5) Designates, by name, a security officer for the terminal;

(6) Provides for the evaluation of all security personnel of the terminal, before hiring, to determine suitability for employment; and

(7) Provides for coordination with vessel security while any passenger vessel subject to Part 120 of this chapter is moored at the terminal.

(b) Each operator of a passenger terminal shall work with the operator of each passenger vessel subject to part 120 of this chapter, to provide security for the passengers, the terminal, and the vessel. The terminal, however, need not duplicate any provisions fulfilled by the vessel. When a provision is fulfilled by

a vessel, that fact shall be referenced in the applicable section of the Terminal Security Plan required by § 128.300.

§ 128.210 Terminal security officer.

(a) Each operator of a passenger terminal shall designate a security officer for the terminal.

(b) This officer shall ensure that—

(1) An initial comprehensive security survey is conducted and updated;

(2) The plan required by § 128.300 is implemented and maintained, and that amendments to correct its deficiencies and satisfy the security requirements of the terminal are proposed;

(3) Adequate training for personnel responsible for security is provided;

(4) Regular inspections of the terminal are conducted;

(5) Vigilance, as well as general awareness of security at the terminal, is encouraged;

(6) All occurrences or suspected occurrences of unlawful acts and related activities are reported in accordance with § 128.220 and that records of the incident are maintained; and

(7) Coordination, for implementation of the plan required by § 128.300, takes place with the vessel security officer of each vessel that embarks or disembarks passengers at the terminal.

§ 128.220 Reporting of unlawful acts and related activities.

(a) Either the operator of the terminal or the operator's representative shall report each unlawful act, breach of security, or threat of an unlawful act against the terminal, a passenger vessel subject to Part 120 of this chapter destined for or moored at that terminal, or persons on the terminal or vessel, to the COTP, to the local office of the Federal Bureau of Investigation (FBI), and to the local police agency having jurisdiction over the terminal.

(b) Either the operator of the terminal or the operator's representative shall file a written report of the incident using the form ''Report on an Unlawful Act'', contained in IMO MSC Circular 443, as soon as possible to the local COTP.

Subpart C—Plans and Procedures for Terminal Security

§ 128.300 Plan: General.

(a) Each operator of a passenger terminal subject to this part shall develop and maintain, in writing, for each such terminal of which it is the operator, an appropriate Terminal Security Plan that articulates the program required by § 128.200.

(b) The Plan must be developed and maintained in accordance with the guidance in IMO MSC Circular 443 and must address the security of passengers, of members of crews of passenger vessels subject to Part 120 of this chapter, and of employees of the terminal, by establishing procedures, for periods of low, medium, and high threats, to—

(1) Deter unauthorized access to the terminal and its restricted areas and to any passenger vessel moored at the terminal;

(2) Deter the introduction of prohibited weapons, incendiaries, and explosives into the terminal and its restricted areas and onto any passenger vessel moored at the terminal;

(3) Encourage vigilance, as well as general awareness of security, at the terminal;

(4) Provide adequate training to employees of the terminal for security at the terminal;

(5) Coordinate responsibilities for security with the operator of each vessel that embarks or disembarks passengers at the terminal; and

(6) Provide information to employees of the terminal and to law-enforcement personnel, in case of an incident affecting security.

(c) The operator shall amend the Plan to address any known deficiencies.

(d) The operator shall restrict the distribution, disclosure, and availability of information contained in the Plan to those persons with an operational need to know.

§ 128.305 Plan: Procedure for examination.

(a) Each operator of a passenger terminal subject to this part shall submit two copies of the Terminal Security Plan required by § 128.300 to the COTP for examination before October 16, 1996, or at least 60 days before transferring passengers to or from a vessel subject to Part 120 of this chapter, whichever is later.

(b) If the COTP finds that the Plan meets the requirements of § 128.300, the COTP shall return a copy to the owner or operator marked ''Examined by the Coast Guard.''

(c) If the COTP finds that the Plan does not meet the requirements of § 128.300, the COTP shall return the Plan with an explanation of why it does not meet the requirements.

(d) No terminal subject to this part shall transfer passengers to or from a passenger vessel subject to Part 120 of this chapter after November 16, 1996, unless it holds either a Terminal Security Plan that has been examined by the Coast Guard or a letter from the COTP stating that the Plan is currently under review by the Coast Guard and that normal operations may continue until the COTP has determined whether the Plan meets the requirements of § 128.300.

§ 128.307 Plan: Amendment.

(a) The operator of a passenger terminal subject to this part may initiate amendments to the Terminal Security Plan on its own as well as when directed by the COTP.

(b) Each proposed amendment to the Plan initiated by the operator of a passenger terminal, including changes to the enclosures required by § 128.300(a), must be submitted to the COTP for review at least 30 days before the amendment is to take effect, unless a shorter period is allowed by the COTP. The COTP will examine the amendment and respond according to § 120.305.

(c) The COTP may direct the operator of a terminal subject to this part to amend its Plan if the COTP determines that implementation of the Plan is not providing effective security. Except in an emergency, the COTP will issue to the operator a written notice of matters to address and will allow the operator at least 60 days to submit proposed amendments.

(d) If there is an emergency or other circumstance that makes the procedures in paragraph (c) of this section impracticable, the COTP may give to the operator of a terminal subject to this part an order to implement increased security measures immediately. The order will incorporate a statement of the reasons for it.

§ 128.309 Right of Appeal.

Any person directly affected by a decision or action taken by the COTP under this part, may appeal that action or decision to the cognizant District Commander according to the procedures in 46 CFR 1.03–15; the District Commander's decision on appeal may be further appealed to the Commandant according to the procedures in 46 CFR 1.03–25.

Dated: July 10, 1996.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 96–18115 Filed 7–17–96; 8:45 am]

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